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THE
PUNJAB MUNICIPAL ACT
WITH
SMALL TOWNS ACT
AND
EXECUTIVE OFFICER'S ACT

VERIFIED
JUNE, 75

THE PUNJAB MUNICIPAL ACT

(PUNJAB ACT III OF 1911)

(As modified by Punjab Amendment Acts II of 1919, I of 1922 and II of 1923, I of 1925, XV of 1926, IV of 1929, I of 1931 and III of 1933 and Devolution Act, XXXVIII of 1920.)

WITH SMALL TOWNS ACT (PUNJAB ACT II OF 1922.)

(As modified by Punjab Amendment Acts IV of 1925, XIV of 1926 and IV of 1929)

AND EXECUTIVE OFFICER'S ACT.

**BY
HARI CHAND, M. A., LL. B., ADVOCATE
LEGAL ADVISER TO MUNICIPAL COMMITTEE LAHORE
1907—1932.**

THIRD EDITION

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PREFACE TO THE THIRD EDITION.

SINCE the last edition, the Municipal Act has further been amended by Amendment Acts of 1925, 1926, 1929 and 1933. The last of these, namely, the Punjab Municipal Act, III of 1933, effected considerable changes which have all been incorporated in the present edition.

The Executive Officer's Act has also been introduced and certain amendments in the Municipal Act, as applicable to municipalities to which the Executive Officer's Act has been extended, have been specifically noted under sections so affected. There is a bill before the Legislature to amend certain provisions of the Punjab Municipal Act. This is mainly intended to remove errors of drafting while proposed amendment of Section 13 is an important one. Similarly the Executive Officer's Act is also proposed to be amended to correct certain references to the Municipal Act as amended by Act III of 1933. These bills have yet to be passed by the legislature but they have been noticed in the Acts themselves or in the Addenda and Corrigenda.

In the preparation of this book I have already acknowledged the valuable help I have derived from certain standard works referred to in the Preface to the Second Edition.

I hereby again acknowledge my indebtedness to these standard works. Dillon on "Municipal Corporations," Aiyangar's "Municipal Corporations in British India," Lumley's "Public Health Acts," Blackwell's "Law of Meetings" and Crew's "Procedure at Meetings," deserve special mention in this connection.

To make the publication useful throughout India comparative tables of sections of provincial Municipal Acts under the corresponding provisions of the Punjab Municipal Act have been given. Decisions of all the High Courts, and Chief Courts having any bearing on the interpretation of the Punjab Municipal Act have been cited.

HARI CHAND.

Lahore, 15th April, 1934.

PREFACE TO THE SECOND EDITION.

THE first edition of the book was long out of print and the present edition was under contemplation for some time and was postponed till the Amendment Act, II of 1923, was published. Since the first publication several Amendment Acts have been passed and the recent Amendment Act, II of 1923, has effected considerable changes in the main Act. All these Amendment Acts have been incorporated in the present edition.

Administration of small towns has been provided in a separate Act and opportunity has been taken to include that Act with brief notes on its provisions. For fuller notes the reader is referred to the notes on the corresponding provisions of the Municipal Act.

For the elucidation of the various provisions of the Municipal Act English authorities have been more extensively used than was the case in the first edition.

Some of the important Rules applicable to all the municipalities and small towns have been given at the end, while some important bye-laws of the Lahore Municipality are also included.

No pains have been spared to make the book useful to those for whom it is intended. The cases up to end of October 1923 have been noted.

I take this opportunity of acknowledging the valuable help I have derived from the standard works on Municipal Corporations. Dillon on "Municipal Corporations," Aiyangar's "Municipal Corporations in British India," Lumley's "Public Health Acts," Blackwell's "Law of Meetings" and Crew's "Procedure at Meetings" deserve special mention in this connection.

HARI CHAND,

Lahore, 15th November, 1923.

PREFACE TO THE FIRST EDITION.

THIS publication does not pretend to give a critical commentary on the Punjab Municipal Act. An attempt has been made to give under appropriate headings all the rulings of the different High Courts and of the Chief Court, Punjab, having any bearing on the Act. For that purpose cases reported in both official and non-official reports have been cited.

Under each section, wherever possible, corresponding provisions of the other provincial Municipal Acts are quoted. Reference to those provisions, it is hoped, will enable the reader to see how far decisions bearing on the provisions of those Municipal Acts are proper guides for the interpretation of the Punjab Municipal Act.

HARI CHAND.

Addenda & Corrigenda.

Page 7, under heading "**Taxes assessed**" *add* the following:—

"Taxes invalid at the time of imposition are not validated under Section 2 (2) *Cf.* 1934 P. C. 62."

Section 2 (2) of the Act does not validate proceedings which purported to be under a repealed Act but which were invalid and outside the powers of the repealed Act. Such invalid proceedings are not proceedings under the repealed Act. The terms of Section 2 (2) are amply satisfied by limiting them to fill the gap made by the repealed Act. *Ibid.*

Page 19, para. 1, line 6 *read* 1927 Rangoon 161 *for* 1927 Rangoon 164.

Page 20, para. 1, line 4 *read* 46 Cal. 910 *for* 46 Cal. 510.

Page 26, para. 3, last line *read* 59 M. L. J. 650 *for* 51 M. L. J. 650.

Page 41, para. 2, last line *read* 112 I. C. 564 *for* 112 I. C. 561.

Page 42, para. 5, last line *read* 7 C. W. N. 374 *for* 7 C. W. N. 274.

Page 46, para. 2, last line *read* 14 Cal. 256 *for* 13 Cal. 256.

Page 50, para. 4, line 4 *read* 7 I. C. 935 *for* 7 I. C. 935.

Page 50, para. 5, line 6 *read* 30 Cal. 721 *for* 30 Cal. 711.

Page 50, para. 5, line 7 *read* 7 C. W. N. 706 *for* 7 C. W. N. 766.

Page 60, para. 1, line 5 *read* 9 I. C. 652 *for* 9 I. C. 562.

Page 65, para. 1, line 4 *read* 18th *for* 8th

Page 66. At the end of the notes to Section 3 (12) *Add:—Limitation.*—The English maxim "Once a highway, always a highway" does not apply to India. The municipality is not entitled to claim the benefit of article 149, Schedule 2 of the Limitation Act, even if the land of the street was ceded by Crown: 19 Mad. 154. *See* also the observations of Justice Sir V. Bhashyam Aiyangar as regards the operation of law of limitation on the rights of local bodies in the public streets made in 25 Mad. 635. On the analogy of 20 All. 200 it would appear that the exclusive right of occupation cannot be acquired by prescription in any specific portion of street, the use of which was dedicated to public.

Page 76, para. 3, line 2, *omit* the words "p. 19."

Page 77, para. 4, line 2 *read* 1923 Mad. 360 *for* 1923 Mad. 230.

Page 78. Section 13, clause (1) is proposed to be amended as follows: "If a member of committee is appointed by office, the person for the time being holding the office, shall, unless the local Government otherwise directs, be a member of the committee until the date fixed for the meeting at which his successor is required to take the oath of allegiance."

For sub-section 3 of the same section the following sub-section is *proposed to be substituted*:—

"(3) Notwithstanding anything contained in sub-section 2 or in any rules made by the local Government thereunder, an outgoing member shall,

unless the local Government otherwise directs, continue in office until the date fixed for the meeting at which his successor is required to take the Oath of Allegiance."

The proposed amendment will render the existing members to continue till their successors become effective members.

Page 79, in para. 4 headed **Validity of notice.**—*read* 134 I. C. 131 *for* 134 I. C. 113.

Page 82. Proviso to sub-section (1) of Section 16 is proposed to be amended by the substitution of full stop *for* ";" (semi-colon) and the word "and".

This was an error in drafting.

Page 101, para. 1, line 8 *omit* 23 C. W. N. 656.

Page 101, paras. 2 and 3, last line *read* 38 I. C. 847 *for* 38 I. C. 848.

Page 110, para. 1, last line *read* 52 Mad. 446 *for* 52 Mad. 441.

Page 120, para. 6, line 3 *read* "Barron" *for* "Barran".

Page 140, under heading "**Notice of meeting**" *add* **Corporation meetings, failure to summon persons entitled to take part in meetings. Defect cannot be waived.**

In the case of a statutory meeting which is to affect the rights of third party such as tax-payers, failure to summon duly all the persons entitled to take part in the meeting is not a defect which can be waived by the individual members concerned. 1934 P. C. 62.

Page 164—**Onus of proof for delegation.** It lies on those who allege that they had powers to do certain acts under the delegated authority of the committee. 1 Cal. L. J. 51.

Powers of withdrawal.—The delegation of any powers to a sub-committee or officer is always subject to an implied power of resumption at any time. By delegation the committee does not vacate its powers to act. The parent body is still seized of powers over matters delegated to sub-committees or officers. Orders and resolutions passed by the parent body with reference to matters delegated are valid without any special recall of delegation. (*Huth v. Clarke* 1890) 25 Q. B. D. 391. Withdrawal under the section means that the delegatee ceases to exercise the powers delegated.

Page 171, para. 1, line 20 *read* "complied" *for* "comply".

Page 175. At the end of Notes, under Section 37, *add* "**Validity of proceedings, proof of.**—Any attack on the proceedings of a statutory body such as the municipal committee must be clearly defined and clearly proved." 1934 P. C. 62.

Page 175—**Presumption as to regularity of proceedings.** It will be presumed that the Municipality has used the regular procedure, and that the common course of business has been followed in particular cases. A person alleging that any tax is illegal because the strict procedure was not followed, must prove his defence. 20 Bom. 732.

Page 180. At the end of Notes under Section 38, *add* **Dismissal of Secretary, temporary injunction.**

Although the secretary of the District Board may establish that he has been wrongfully dismissed, still, assuming that he has established that point

he is not entitled to the remedy of injunction or of specific performance. He cannot get the temporary injunction for restraining the Board from enforcing its resolutions. 1934 All. 101.

Page 189, para. 1, line 11 *add* "semi colon" after 962.

Page 208, para. 1, last line *read* 90 I. C. 340 *for* 90 I. C. 240.

Page 208, para. 2, last line *read* 56 M. L. J. *for* 66 M L J

Page 239, para. 2, last line *read* 16 Mad 317 *for* 16 Mad. 307.

Page 241, para. 3, line 8 *read* 30 Cal. 37 *for* 30 Cal. 217.

Page 242. Section 50 (2). It is proposed to amend the sub-section by substituting the word "sub-section" *for* the word "clause".

An error of drafting is being corrected.

Page 251, para. 1, last line *read* 23 Q. D. 492 *for* 23 Q. B. 4921.

Page 257, para. 5, line 7 *read* 1930 Sindh 287 *for* 1932 Sindh 287.

Page 257, last para. last line *read* 22 Bom. 646 *for* 22 Bom. 616.

Page 258, para. 3, line last *read* P. R. 103 of 1892 *for* P. R. 103 of 1899

Page 263, para. 2, line 15 *read* (1913) I K. B. 422 *for* (1929) K. B. 42

Page 264, para. 3, line 2 *read* (1891) I. Q. B. 332 *for* (1894) I. Q. B. 388.

Page 265, para. 1, line 10 *read* 79 J. P. 51 *for* 79 J. P. JI. 112.

Page 270, para. 6, line 4 *omit* the word "on" before "such".

Page 280, para. last line *add* 1928 Mad. 160.

Page 318, under para. headed "**Failure to fix scale**" *add* 1934 P. C. 62.

Page 319, para. 5, last line *read* 1926 Mad. 800 *for* 1926 Mad. 830.

Page 325, para. 2, last line *read* 23 Mad. 523 *for* 23 Mad 532.

Page 327, *add* at the end of Notes to Section 65. **Notice of enhancement.**—Notice of enhancement under Section 65 is necessary otherwise the assessee will be entitled to recover the tax paid. 1928 Mad. 348; 106 I. C. 529.

Page 345. After para. headed "**Goods in transit**" *add* "**Introduce or attempts to introduce.**" The words "introducing or attempting to introduce within the octroi limits" occurring in S. 155, of U. P. Act II of 1916=S. 78 of P. M. Act obviously imply the introduction of dutiable articles from a place outside the municipal limits into the municipal limits. Where there is an intervening space between two parts of a municipal area and goods are taken from one such part to another, it cannot be said that such goods are being introduced within the octroi limits. 1934 All. 318.

Presumption as regards goods found within Municipal limits.—If articles, which are of foreign production, are found exhibited by vendors within a municipality it is permissible to presume that they had paid octroi duty on such goods when the same were originally imported. 1934 All. 318.

Page 348. Section 78-A. It is proposed to add the words "the committee of" between the words "Small town or" and the words "an area notified".

Page 349. Margin to section 78-B. In the margin read "exported" for "is posted".

Page 358, para 11, line 4, read 26 Mad. 475 for Mad. 470.

Page 359, under para. headed add "**Rent for temporary occupation**".

Page 360 Margins for Section 81-A and 82 to be transposed.

Page 368, last para., last line read 21 Cal. 319 for 21 Cal. 316.

Page 375, para. 3, last line read 3 Mad. 129 for 3 Mad. 127.

Page 375, under heading "Onus of Proof" add the words "and not" after the word "exacted".

Page 458. At the end of Notes to Sec. 125 add the following:—

S 125 (2) employing The term refers to the employment of any kind or for any length of time, 23 Bom. 528.

Right of appeal.—No right of appeal is given under this or the following sections, the reason being that matters of sanitation and health in connection with private drains etc., are matters at the same time so urgent and also so entirely for the local authority that it was thought better to constitute them the sole arbitrators of such matters and it is not for the Magistrate to question the reasonableness of the notice when accused is prosecuted for non-compliance. The Magistrate will however have every right to question the legality of the notice. 43 All. 644.

Tah Zamani for permanent occupation—When the permission is granted unconditionally under S. 172 the committee cannot subsequently levy *Tah Zamani* and such a levy being neither a tax nor a fee, cannot be recovered under Section 81. 1934 Lah. 84 (2), 14 Lah. 664.

Page 471, para. 1, line 2 omit the figures "182" after "Ex".

Page 535. For Margin to Section 170, read "Power to require protection of streets during cutting down of trees, erections or demolition of buildings &c."

Page 537. Section 170-A is proposed to be amended. This amendment has already been incorporated as required by General Clauses Act. Similarly, the proposed amendments of Sections 170-B, 170-C and 170-E have already been incorporated in the above sections in accordance with the provisions of the General Clauses Act.

Page 572. Under para. headed "**Imposition of conditions when sanctioning encroachments.**" add at the end of para on p. 573, "In 14 Lah. 664=1934 Lah. 84 (2) it was held that any condition as regards levy of *Tah Zamani* cannot be imposed subsequently if not imposed at the time of sanction."

Page 598. Proviso to Section 174 (1) is proposed to be amended as follows:—

"Provided that the committee shall make full compensation to the owner of the building, or to the owner of the land, thus vacated, for any

damage he may sustain in consequence of his buildings or any part thereof being set back.

In the original proviso the words "deleted" appear to have been wrongly repeated.

Page 608. **Add "Right of easement in projections"**—No right of easement overriding the provisions of Sections 172 and 175 can be acquired with respect to such projections, etc., 5 I. C. 916.

Page 665. Clause (g) of Section 190 is proposed to be amended as under:—

"(j) The ventilation of rooms and the minimum dimensions of doors and windows."

The original was evidently wrongly drafted.

Page 677. Clause (c) of S. 192 (1) is proposed to be amended by the substitution of "twenty and ten" for the words "forty and twenty" respectively.

It is to be observed that the last four words of this clause, "within the municipal area" seem to be ambiguous. Do they relate to the land of a particular individual wherever situated in the municipal area or only within the area affected by the scheme?—this also has to be cleared up in the proposed amendment.

Page 682 Section 192-A is proposed to be amended as follows :

192-A. If under the provisions of any scheme sanctioned under Section 192 the erection or re-erection of buildings in a specified area for a specified purpose is prohibited, any person who after such scheme is sanctioned uses any building for such purpose shall unless it was used for this purpose before the scheme was sanctioned, on conviction by a magistrate, be liable to fine which may extend to five hundred rupees, and if after such conviction he continues to use the building for such purpose shall be liable to fine which may extend to fifty rupees for every day during which such use continues.

Note.—The word "and" before "unless" and the word "he" were redundant due to defect in drafting.

Page 717. Section 197. The section is proposed to be amended. The proposed amendment of punctuation has already been incorporated in the section. Similarly the proposed amendment of clause (w) of Section 240 (1) has been noticed in the text.

Page 719. Under para. headed "**Grant of licenses**" add the following para. :—

Clause (d).—See 9 Bom. 272, 11 Bom. 106 and 30 Bom. 126 on the interpretation of the corresponding section of the Bombay Municipal Act. It is further to be noted that there the use of a place as a market is only prohibited.

Page 744 at the end of Notes under S. 218 add the following :—

Offence created without due publication.—If an offence is created by a bye-law or order or notice then it is necessary for those who have

power under the Act to create such an offence to publish the fact so that the public at large may know that such an offence has been created.

A meeting of the Commissioners of a municipality resolved that certain trade should not be carried on within the area of the municipality without a license but no notification whatever to the public was made of this resolution. Prosecution of certain persons was commenced for the breach of this resolution. *Held* that the conviction could not stand as it was necessary for the municipality to notify to the public that such an offence has been created. 110 I. C. 788; 1928 Pat. 506.

Page 854. Under para. headed "**specific remedy**" *add* the following para:—Where a new remedy is given in a case by statute where an old remedy existed, the ordinary presumption is that this new remedy is a cumulative one and not in lieu of the old remedy. 1931 Mad 83.

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PUNJAB MUNICIPAL ACT, 1911.

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70	154	818		751	579		780	223
	158	580	83	654	857		796	174
	409	466	84	325	358			612
	416	65		439	751	93	627	595
	780	841		532	102		827	499, 500
71	194	204, 205		718	64, 576		856	474
	775	695	85	322	824	94	192	467
	1039	840		345	55		660	841
72	356	432, 439,		533	51	95	122	696
		852		761	63, 608		226	583
	613	445	86	57	628	96	5	857
	703	207, 363		293	240		600	319
	902	837, 857		509	182, 282	97	172	835
	133	841		964	435		238	17
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	811	434		809	595		207	795
98	947	442	110	5	371		221	475
	400	752		89	307		547	582
	407	346		326	629		615	209
	454	114		342	855		851	833, 850
	654	694, 695		765	854		867	230
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		834	111	114	308		139	741
99	80	754		736	432		424	606
	148	818		740	208		500	387
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		208 234,		588	43		111	387
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	98	807		710	84		345	433
	280	301		780	795		385	64
	426	869		861	453		398	339
	645	454	13	276	72		430	353
	813	695		389	183		495	468, 471
101	1010	501		520	579		514	371
	100	829, 831		548	830		691	374
	285	654		625	106		742	232
	446	457	115	59	856	123	55	787
	666	323		307	753		237	227
	667	430		308	753		289	439
	686	445		452	347		370	354
103	747	571		664	724		536	499, 501
	411	510		690	506	124	105	455
	683	16		775	687		705	233
105	821	172		813	848	125	233	362
	216	857	116	798	759	126	324	184
	328	577		806	280, 281		525	696
	361	816		814	27		567	673
106	759	132		908	757		908	327
	129	832	117	336	499	127	181	753
	147	398		575	354		221	713
	205	854		801	722		690	266
	265	127		883	848	128	146	851
107	456	119	118	223	720		161	232
	601	310		710	784		394	224
	690	593		713	394		732	108
	902	988		780	112, 828	129	635	712
108	212	856, 843	119	145	832	130	750	442
	216	309, 310		191	339	131	193	18
	414	372		369	454		221	571
	454	348		465	443		633	310
	488	327		597	856	132	113	230
	524	297		622	319		694	297, 348
109	868	625		884	328			365
	618	527	120	30	610		696	574

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Burma Act.	Punjab Act.	Burma Act.	Punjab Act.	Burma Act.	Punjab Act.	Burma Act.	Punjab Act.
2 (2)	3 (2)	38 A.	43 (3)	97	170-F	137	188 (e)
(3)	3 (2)	39	47	98	171 (1) (2)		(vii)
	(a)	40	48	98 (4)	225	137 A.	125
(5)	3 (4)	41	58	99	171 (3)	137 B.	126
(6)	3 (7)	42	49	100 (1)	189 (3)	137 C.	136
(7)	3 (4-A.)	43	50		190	137 J.	141
(9)	3 (16)	44	19	100 (2)	193	137 K.	211
(10)	3 (8)	45	45	100 (3)	195	137 L.	142
(16)	3 (9)	46	61	100 (5)	193	137 M.	146
(20)	3 (11)	46 (4)	3 (1)	101	188 (d)	137 N.	145 (b)
(30)	3 (13)			102	188 (e)	137 O.	143 (3)
(34)	97 Expl.	50	61 (f)		188 (e)	137 Q.	143
(35)	3 (5)	51	62	103	188 (d)	137 R.	35
3	4-6, 10	52	70 (2)		and 155	137 S.	35 (1) Pro.
4	11	53	70 (1)	104	116	137 V.	203
6	5 (4), 8	54	71	104-A.	117-8	137 W.	208
	and 10	55	240 (r)	104-B.	52 (2) (h)	137 X.	208
7 (a)	11	56	69	105	181, 198	137 Y.	206
7 (b)	12	57	2 (2)	106	188 (e) (i)	137 Z.	203
7 Prov.	14	58	79	107	106	137 AA.	204
8	240 (1)	60	63	108		137 BB.	163
9	13	61	64	109	107	137 CC.	205
10	15	62	65	110		137 DD.	35
11	16	63 (1)	66	111	154	137 EE.	213
12	17	63 (2)	84	112	188 (e) (v)	137 FF.	221
13	18	65	67	113	188 (c)	137 GG.	221
16	19	67	68	114	188 (e) (ii)	138	93
17	20	69	80 (4)	115		139	94
18 (1)	21	70	72	116	173	140	95
18 (2)	22	71	51	117	121	142 (a)	188 (a)
19	23	72	52	118	123		(b)
21	24	75	54		197	142 (g)	188 (e) (i)
22	25	76	55	119	188 (e) (i)	142 (j)	188 (e) (iv)
23	26	78	56	120	167	142 (o)	188 (e) (iii)
24	27	79	57	to	188 (i)	142 (q)	188 (u)
25	28	80	59	122	188 (e) (i)	142 (i)	188 (v)
26	Rules	81	56 (2)		197	143	201
27	29	83	58 Expl.	124	188 (s)	144 (1)	214
28	30	84	169		168	144 (2)	220
29	Rules	86	173		188 (i)	145	222
30	31	87	176	125	154	146	224
32	36	88	179	126	125	147	225
33	37	89	181	127	155	148	219
34	38	90	180	128 (a)	156	149	219
34 A.	38	91	174	128 (b)	129	151	226
35	39	93 (1)	190	129	140	162	183
35 B.	240 Rules.	93 (2)	195	130	140 (2)	163	185
35 C.	31	93-A.	170	131	131	164	182
36	42	94	132	133	173 (1) (d)	169	186
37	43 (1)	96	170-B	135	120	177	177
38	43 (2)		to 170E.	136	149	178	179 (2)

Burma Act.	Punjab Act.	Burma Act.	Punjab Act.	Burma Act.	Punjab Act.	Burma Act.	Punjab Act.
179	178	186	236	195	228	205	9
181	153	187	238	197	229	206	81
181 A.	152	188	239	198	230	207	60
181 B.	152	189	240(u)	200	200	210	241
182	231	190	240	201	218	211	242
183 (1)	232	191	240(q)	202	2(2)	212	243
183 (2)	235	192	237	203	215	213	245
184	233	193	240	204	215(4)		
185	234	194	91				

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U. P. Act.	Punjab Act.	U. P. Act.	Punjab Act.	U. P. Act.	Punjab Act.	U. P. Act.	Punjab Act.
1	1	32}		84	19	135	62
2 (1)	3 (4)	33}	231	85	45	137	71
2 (2)	3 (2)	34	232	86	25	140	3 (2)
2 (3)	3 (3)	35	234	87	26	141	63
2 (7)	3 (8)	36	233	88	27	142	64
2 (9)	3 (9)	38	13	89	28	143	65
2 (11)	3 (10)	39	15	90—91	Rules	144	66
2 (13)	3 (11)	40	16	92	29	145	68
2 (15)	3 (16)	41	16	94	30	147	67
2 (18)	3 (17)	43	20	95	240	148	73
2 (19)	3(13)(b)	44	20	96	46	151	72
2 (21)	3 (12)	45	21 (4)	97	47	153	240
2 (23)	3(13)(a)	46	21	99—103	Acc.	154	78 A.
2 (24)	3 (14)	47			Code	155	78
2 (25)	Expl. to Sec. 97	47A.}	22	104	31 (f)	156	70(2)(a)
3	4	48	22	105 to	Rules	157	70 (1)
4	4	51	25, 28	109	under 31		70(2)(c)
5	5 (4)	54	20 (2)	110	36		71 (1)
6	11, 18	55	28	112	33	158	73
7	52, 93, 96	56	24	113	37	159	75
8	52	57 to	Ex. Off.	114	51	160	84
9	12	65	Act.	115	54	161	85
10	9	66	38	116	56	162	84(2)(3)
11	240 (b)	67	39	117	58	163	84 (4)
	(c)(d)	68	38	118	57 (2)		(5), (6)
13	17	74	39	119	57	164	86
14 to 22	Election Rules	76	Ex. Off. Act.	120	52	165	169
23	248	78	43	121}	8	166}	80
24	248	79	43 (2)	124}		167}	
25 to 29	Election Rules	80	43 (4)	125	224	168	
30	238 (1)	81	50	126	187	169	81
31 A. }	238 (2)	82}	48	127	240	173	81
		83}		128	61	174	81 (1)
				131}		177	80 (3)
				132}	62	178	189 (2)
				133}		178(3)	3 (5)

U. P. Act.	Punjab Act.	U. P. Act.	Punjab Act.	U. P. Act.	Punjab Act.	U. P. Act.	Punjab Act.
179	189 (4)	220	173	264	119	303	215
180	191	221	171(3),	265	173, 182	304	218
181	193		171(4)	266	173 (1)	305	37
180(5)	129 (1)	222	174		(d)	306	219
181	194	224	96	267	125	307	220
183	196	225		268	125 (2)	308	222
186	195,	226	149	269	126	309	223
	195A	227	128	270	203	313	228
187	93	228	97	271		314	229
188	94	229	97	272	155	315	219-A.
189	52, 132	230	98 (2)	273	154	316	91
190	169	232	98	274	156	317	225, 84
191	135	234	99	275	168	318	84(2)
192	125	235	100, 101	276	129	319	84
195	158	236	175	277	143	320	225(3)
196	159	237	167	278	116	321	226
197	159	238	188 (j)	279	141	322	227
198	161	240	188 (i)	280	142	323	224
199	163	241	197	281	146	324	239
200	160		188(e) (ii)	282	120	325	49
201	165	242	148	283	117	326	32(1)
202	166	243	206	284	131	327	30
203	170-A	244	206	285	107	328	202
	170-B(2)	245	123	286	106	329	2
204	170-B	246	152	287	205		
205	170-C	247	153	288	203	334	
206	170-D	248	151	290	220		
207	170-E	249	109 (1)	291	81	337	241
208	170-F	250	110		173		
209	172,	251	109 (2)	293	188 (u)	338	242
	188 (u)	252	183 (2)	295	221		
210	172 (1)	253	183 (1)	296	240	339	245
211	172 (2)	254	111	297	31, 33		
	175	255	182	298	121, 168		
212	171	256	182		190, 198		
213	170	257	181		(e)		
214	118	258	210	299	199		
215	114	259	180	300	200		
216	140	260	186	301	201		
217	179	261	173, 177	302	214, 219		
218	176	262	185		prov.		
219	169	263	113, 114				

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1	1	37	18	85	240(r)	138	107
2	2	38	56	86	31(f)	139	108
3(a)	3(2)	39	57	90	169	140	167
3(b)	3(4)	40	58	91	173	141	188(i)
3(d)	3(5)	41	59	92	174	142	152
3(e)	3(6)	42	240 (o)	93	172	143	153
3(f)	3(7)	43	60	94	173	144	93
3(g)	3(8)	44	46-47	95	179	145	94
3(j)	3(10)	45	48	96	176	146	95
3(k)	3(11)	48	49	97	190	147	181
3(l)	3(17)	49	50	98	189	148	180
3(m)	3(13)	50	52	99	193	149	122
	(a)(b)	51	52				188(e)
3(o)	3(14)	52	231	101	191		(vis)
4	4, 5	53	232	102	194	151	213
5	4	54	233	103	195	152	203
6	5 (4)	55	234	104	196	153	205
7	6, 7	56	233	105	140	154	203
8	10	57	238	106	125	155	159
9	9	58	237	107	126	156	204
10	11, 12	60	239	110	127	157	75
11-12	Election Rules	61	51	111	132	158	210
		62	54	112	133	159	206
13-15	240	63	52(1)	113	134	162	207
16	13	64		114	135	163	35
17	17	65	224	115	138	164	220
18	{ 20, 21	66	61	116	136	165	222
	{ 240	66(4)	70(b)	118	154	166	223
19	23	67	62	119	168	167	214
20	24	68		120	115	168	215
21	15, 22	69	70	121	143	169	216
22	16, 22		{ 173, 188	122	116	170	217
23	37	70	(u)	123	119	171	218
24	31, 33	71	240(r)	124	113	172	
	{ 38, 39,	72	73	125	114	173	225
25	41	73	3(1)	126	131	174	226
26	45	75	86	127	117	175	
27	31, 33	76	240(r)	128	128	176	240
29	36, 239	77	81	129	149	177	
30	26	78		131	109		3(3),
31	25	79	80	132	145	178	199 201
32	27	80	82	133	121	179	188
33	28	81	80(4)	134	123	180	188 197,
34	29	82	78-A	135	188(h)	181	202
35	30	83	84	136	120	182	73(2),
36	31	84	85	137	106	183	195, 219

C. P. Act.	Punjab Act.	C. P. Act.	Punjab Act.	C. P. Act.	Punjab Act.	C. P. Act.	Punjab Act.
184	173	198	150	213	146	240	241
185	135(2)	199	219	214	150	241	242
186	168(4)	200	183(2)	215	206(2)	242	243
187	155	201	183	216	185	243	245
188	128(2)	202	111	217	217	244	4(7)(a)
189	{121(5)	203	177	218	228	245	171(5)
	{123	204	179(2)	219	229	246	171, 225
190	123(2)	205	152	221	33	247	188(o)
191	120(2)	206	151	222	91	248	136
192	107(4)	207	156	223	92	249	124
193	108(2)	208	129	225	80	250	142
194	167(4)	209	148	226	81		
195	188(i)	210	182	229	84		
196	152	211	147	230}			
197	183	212	141	239}	cf. 192		

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Bombay D. M. Act.	Punjab Act.	Bombay D. M. Act.	Punjab Act.	Bombay D. M. Act.	Punjab Act.	Bombay D. M. Act.	Punjab Act.
1	1	12}	Election	26A	E. O. Act	48(o)	170A
2	2(a)	13}	Rules.	27—	31	48(p)	190
3(3)	3(4a)	14	14	30—34	31	48(r)	188(l)
3(3)A	3(5)(a)	15	Election	34(2)	25(2)	48(s)	189(3)
3(5)	3(3)		Rules.	34(3)	27	48(t)	188(p)
3(7)	3(2)	15A	22	37	33	48(u)	199
3(8)	3(11)	16	16	38	37	48(z)	200
3(11)	3(1)	17	13	39	37, 78A	49	202
3(12)	3(13)	18	17		{18, 46	50(1)	18
	(a)	19	17(4)	40	47	50(2)	56
3(13)	3(13)	20	24	41	58	51	51
	(b)	21	Election	42	50	52	52
3(16)	3(7)	22	Rules.	43	48	53	55
3(17)	3(14)	22A}		44	48	54	52
	4	23	20(1)		31, 40	55	52(1)
	{5		24		{43(3)		(c)
4	6		21	46	{43(2)	56	56
	7		22, 23		{200, 240	58	57
	8	23A	{S. 4 of	47	70	59	61
8	4, 5		{E.O. Act	48	{188 (iii)	60	62
9	18	24	28, 29		{121, 124	61	62(5)
10	12	25	28		167, 197	62	62(8),
11	{11, 14	26 25 to 30		48(h)	73		79
	{240			48(n)	170		

Bombay D. M. Act.	Punjab Act.	Bombay D. M. Act.	Punjab Act.	Bombay D. M. Act.	Punjab Act.	Bombay D. M. Act.	Punjab Act.
63	63, 73, 75	99	56	133	106	156(2)	222
64	64	100	132	134	106, 219	157	222
65	65, 66	101	125	135	131	159	213
66	67	102	135, 136	136	120	160	224
67	68	106	125	137	182	161(1)	228
68	61	107	126	137A	148	161(2)	81
69	72	108	125	138	121(3)	163	219-A
70	(173	109	126	139	167, 188	167	49
	(188 (u)	110	127, 135		(eii)	168	91
71	81, 97, 99	111	203	140	167, 188	169-172	240
73	71(2)	113	172, 175		(e)	173	231
76	76, 77	114	140	141	167, 168	174	232
77	78	115	176		206	175	233
79	82	116	179	142	150	176	42
81	78-A	117	178		142	177	38, 39
81-A	83	118	118		143	178	234
82	80			143	144	179	238
83	81	119	114		149	180	237
86	84	120	(131		207	182	
87	80(3)		149	148	183(d)		
90	169, 171	121	173	149	192		
91	170-A	122	172, 173	150	107	186	Ex. Off- cers Act.
	170B-F	123	170	151	121, 123		
91-A	174	125	173	151A	124	186A to	Ex. Off- cers Act.
92	174	126	186	152	152	186Q	
93	174	127	156	153	153	187	241
94	181	128	129	154(1)	215	188	242
	189, 191	129	155	154(2)	216	189	243
96	192, 195	130	154	154(3)	218	190	244
	3(5)		115, 117	154(4)	215(5)	191	245
		131	116, 119	„ (5)	214		
			153	„ (6)	220		
		132	204	155	219		
				156	220		

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B. & O. Act.	Punjab Act.	B. & O. Act.	Punjab Act.	B. & O. Act.	Punjab Act.	B. & O. Act.	Punjab Act.
1	1	4	4, 5, 6	12	11, 18	28	20
2	2	5	4(4)	13	11, 12	29	13, 21
3(1)	3(2)	6	4(6)	14	14	30	17, 23
3(14)	3(9)		7(2)	15-19	240	31	13
(15)	3(10)		5(3)	20	20	33	22
(18)	3(11)	7	9(2)	21	20	34	22
(24)	3(12)	8	5(4)	23	20(2)	35	16
(30)	3(14)	10	8, 10	24		36	16(2)
(31)	Expl. 97	11	9	27	Ex. Off- cers Act	37(1)	39

B. & O. Act.	Punjab Act.	B. & O. Act.	Punjab Act.	B. & O. Act.	Punjab Act.	B. & O. Act.	Punjab Act.
37(2)	Ex. O.	117	66	206	163	286	206
	Act, 39	119	86	207		287	150
38	43(2)	121	62(11)	208	154	288	206
39	43(1)	123	80	299(1)		289	115
39(3)	40	124	81	209(2)	156		188[ei]
40	45	128	81	211	155	291	{197
42	31	134	80(4)	212(1)	156		{167[2]
43	25	137	61(c)	212(2)	129	292	96
44	25(2)	140	73	213	52[a]	300}	132
45	28	147	75	214	125[3]	301}	
46	29	151	61(c)	215	128	302	134
47	27	153	188(s)	216	203	303	135, 136
48	30	154	188(a)	217	125-6	304	136
49	31(f)	155		218	200	306	138
		155 162	188(a+b)	222	52[2]	307}	205
51	36			224	135		209
52	31			225	130	313	96
53	50	163	240	227	106	315	98
55	48	164	170A	228	131	316	97[2]
56	48(2)	16	170B	229	149[b]	317	{101
57	37	166	170C	230	149		{100
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63	58	169	170F	233	131	326}	88
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66	54	173	174	236	116	342	52
67	52(1)	174	174	237	119	343	188[d]
68	52(2)	176	170	238	125	344	188c
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103	73(2)	195	189[3]	272	210	382	231
105	63		190	273	180	383	232
106	68	196}		274	95	384	234
107	67	197}	172	275	52	385	238
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PUNJAB ACT No. III of 1911.

[Received the assent of the Lieutenant-Governor of the Punjab on the 3rd May 1911, and that of the Governor-General on 7th July 1911, and was first published in the "Punjab Gazette" of the 11th August 1911.]

AN ACT TO MAKE BETTER PROVISION FOR ADMINISTRATION OF MUNICIPALITIES IN THE PUNJAB.

WHEREAS it is expedient to make better provision for the administration of Municipalities in the Punjab; it is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Punjab Municipal Act, 1911;

Title, extent and commencement.

(2) It extends only to the territories for the time being administered by the Government* of the Punjab; and

(3) It shall come into force on such day as the Local Government may, by notification in the Official Gazette, appoint in this behalf.

Notes.

Commencement.—This Act was first published in the *Punjab Gazette* on the 11th August 1911 and came into force on the 1st of October 1911. It received the assent of His Honour the Lieutenant-Governor of the Punjab on the 3rd May 1911 and that of His Excellency the Viceroy and Governor-General on the 7th July 1911.

Subsequent Amendments.—The original Act III of 1911 has been amended by the following Punjab Municipal Amendment Acts:—Act IV of 1918, Act II of 1919, Act I of 1922, Act II of 1923, Act I of 1925, Act XV of 1926, Act IV of 1929 and Act III of 1933; the Act was partly repealed by Devolution Act, 1920. In municipalities to which Executive Officers Act, 1931 is extended, the Act is deemed to have been amended in certain respects. These are indicated under several sections which are deemed to have been amended.

* Substituted for "Lieutenant-Governor" by S. 2 of the Punjab Amendment Act, III of 1933.

The Amendment Act of 1918 received the assent of the Lieutenant-Governor on 12th March 1918 and that of the Governor-General on the 4th of April 1918; the Amendment Act of 1919 received the assent of the Lieutenant-Governor on the 16th December 1919 and that of the Governor-General on the 30th December 1919. The Amendment Act of 1922 came into force from 1st August 1921. The Amendment Act of 1923 received the assent of the Governor on 28th March 1923 and that of the Governor-General on the 24th April 1923. The Amendment Act of 1923 was published on the 4th May 1923, and came into force from 9th May 1923, *vide* Notification No. 15339, dated 9th May 1923.

The Amendment Act of 1925 came into force on 15th May 1925, *vide Punjab Gazette* Notification No. 11876, dated 6th May 1925. The Amendment Act of 1926 came into force on 4th December 1926, *vide Punjab Gazette*, dated 10th December 1926. The Amendment Act of 1929 came into force on 31st August 1929. The Punjab Amendment Act III of 1933 came into force on 17th July 1933. *See Punjab Gazette* Extraordinary, dated the 17th July 1933. All these various amendments and repeal have been embodied in the text of the Act. The main amending acts have also been given separately at the end.

Extension to N.-W. F. Province—By G. I. Notification No. 4-H, dated 7th June 1912, the Act with certain modifications, was made applicable to N.-W. F. Province.

Act II of 1923 was extended by Notification No. 242-L. F. N./XXI-A-77, dated 4th June 1924.

Act of 1925 was extended by Notification No. 570-L. F./XXI-B-87, dated 21st July 1925.

Act of 1926 was extended by Notification No. 927-L. F./XXI-A-77, dated 22nd April 1931.

Act of 1929 was extended by Notification No. 341-L. F./XXI-A-77, dated 5th March 1930.

Modifications applicable to N.-W. F. Province—(1) *Read* "Chief Commissioner of North-West Frontier Province" for "Local Government" and "Revenue Commissioner" for "Commissioner", or "Commissioner of division" and for "Punjab" *read* "North West Frontier Province" throughout the Act as applied to N.-W. F. Province.

Previous Legislation.—The earliest Act in the Punjab dealing with municipal administration was the Act XV of 1867; this was repealed by Act IV of 1873; both these

Acts were very simple and had very little in common with the existing law. In 1882 proposals for the extension of Local Self-Government were put forward in their famous Resolution No. 1777, dated 17th of September 1882, by the Government of India. As a result of these proposals an opportunity was taken to revise the Act IV of 1873. All the various municipal Acts relating to other provinces were consulted and drawn upon. The entire act was recast and enacted as Act XIII of 1884. This was again repealed by Act XX of 1891 which only introduced such changes as experience had proved to be desirable; the Act of 1884 may be said to be the foundation of municipal administration in the Punjab. There have been few changes in principle since Act XIII of 1884.

The present Act replaces Act XX of 1891, it does not introduce any material changes in the principles of municipal administration. The provisions of the old Act have been rearranged so as to make their sequence more logical and convenient. In the words of the mover, in the framing of this Bill, "The object kept in view has been to retain the provisions of the existing Act as far as possible, only altering them where experience has shown that difficulties existed which needed to be solved and adding such new provisions as experience and progress showed to be advisable, giving the fullest powers to committees to manage their own affairs combined with necessary power of control from without; and also to make use of expedients which have been adopted with success in other provinces and in other Acts."

Subsequent Legislation.—The Amendment Act of 1918 introduced the terminal tax, while the Amendment Act of 1923 introduced some important changes which will be noticed at their proper places in the notes. The proportion of elected representatives on the committees was further increased.

The Act has further been amended in 1925, 1926 and 1929, while important amendments have been effected by the recent Amendment Act of III of 1933. The changes introduced will be noticed at their proper places.

Principal changes and additions.—See Statement of Objects and Reasons.

Interpretation of Municipal Acts—Punjab Municipal Act is a Code.—The Punjab Municipal Act is a code of law governing municipal committees in the Punjab and it is to be remembered that the essence of a code is to be exhaustive of the matters in respect of which it declares the law and it is not the province of a judge to disregard

or go outside the letter of enactment according to its true construction. *Cf.* 27 B. 221 at p. 241.

Strict construction of provisions.—The Municipalities Act is a local act of a highly technical nature and one which touches the private rights of individuals. It has, therefore, to be most carefully construed: 6 A. L. J. 544, 2 I. C. 408. The powers given by the Act (XX of 1891) to the Municipal Committees are an interference for the public good with the ordinary rights and privileges of the public and, therefore, the law should be very strictly construed against Committees. 9 I. C. 889.

A power to interfere with the ordinary rights of citizens will not be inferred in the absence of express grant unless it is necessarily implied as incidental to other powers expressly granted or as indispensable to repress the mischief contemplated and advance the remedy given. Doubts as to the existence of such powers must be resolved against the corporation and in favour of the public. 31 Mad. 520.

In construing the fiscal provisions of such Acts the construction, most beneficial to the subject, ought to be adopted. 31 Mad. 408.

Benevolent construction.—Municipal Acts are not “private” Acts. The term “private act” applies to enactments conferring powers upon private associations for purposes which, so far as the associations are concerned, are of a purely private character, although great public advantage may also result from their labours. Hence a municipal Act is not to be construed strictly like a “private Act.” 2 Mad. 362 at p. 392.

When a public body is entrusted by the Legislature with the duty of making public improvements and powers are entrusted to it for such purpose, these powers will not be subject to a restrictive construction though they interfere with private rights. 2 M. 362; 12 B. 474.

Where the rules are framed in the interests of public health they should not be construed in too strict and too limited a sense. 37 I. C. 854.

See also notes under various sections of the Act.

Repeal.

2. (1) The enactments mentioned in the Schedule are hereby repealed to the extent specified in the fourth column thereof.

Saving
clause.

(2) But all municipalities constituted, committees established, limits defined, appointments, rules, regulations, bye-laws and orders made, notifications and notices issued, taxes, tolls,

rates and fees imposed or assessed, contracts entered into and suits instituted under the said acts, or any enactment thereby repealed, shall, so far as may be, be deemed to have been respectively constituted, established, defined, made, issued, imposed or assessed, entered into and instituted under this Act.

Notes.

Analogous Law:—

S. 2, Beng. District Municipal Act, 1884.

S. 2 (2), Beng. Municipal Act, 1932.

Ss. 380 & 391, B & O. Municipal Act, 1922.

S. 5, Bom. Municipal Boroughs Act, 1925.

S. 2 (a), Bom. Dist. Municipal Act, III of 1901.

S. 2 (2), Bom. City Municipal

Act III of 1888.

S. 202, Burma Municipal Act, III of 1898.

S. 2 (3), Cal. City Municipal Act, III of 1923.

S. 2 (2), C. P. Municipal Act of 1922.

S. 2 (2), Rang. City Municipal Act, 1922.

S. 334, U. P. Municipal Act, 1916.

Scope of the Section.—The general scope of the section points to the intention that the system of municipal administration prevailing in the municipalities at the time the Act was passed should continue in force as it then existed. *Cf.* 20 Cal. 699.

General Clauses Act.—By S. 6 of the General Clauses Act the repeal of an Act does not affect the liabilities incurred under any enactment so repealed. Even in the absence of such a saving clause an offence committed under a repealed Act will not save the offender from punishment. S. 147 of U. P. Municipalities Act, I of 1900 made it an offence to construct a drain contrary to the directions of the Board. The accused built a drain contrary to the direction of the Board at a time when Act I of 1900 was in force. The Act was repealed and had no saving clause. The new Act imposed a higher penalty for the offence. The accused had been convicted by the Lower Court under the new Act; the conviction under the new Act was altered. The accused was convicted under the old Act according to the provisions of the General Clauses Act. 15 A L. J. 159; 38 I. C. 736. *See also* 43 I. C. 446.

If a notification is issued under a repealed Act it would be deemed to have been issued under the corresponding re-enacted provisions of the new Act. Where a notification has been issued in 1908 extending the provisions of a particular section with certain modification to a particular municipality such notification will be deemed as having been issued under the new Act. Where the whole Act has been repealed, the particular section must be taken to be repudiated. The

S. 2. of the Act or S. 6 of the General Clauses Act will not authorize the readjustment of the contents of the notification so as to substitute for the repealed section together with modifications of the notification, the provisions of the new Act with the modifications of the old notification. Where under the new provisions recovery of certain taxes was not a charge on the property while under the notification under the repealed Act such a charge was created: it was *held* that the new provisions could not apply with modification created under the repealed Act. 59 C. 1007; 1932 Cal. 315.

Notification.—This word was defined in the old Act. It is used sometimes in its primary meaning signifying merely an announcement, sometimes as an authoritative announcement constituting in itself an effective Act of some subordinate authority. But it is also used to denote in itself an act of Government as contrasted with a mere announcement of an Act of Government. It means an order made and notified. 20 Cal. 699

A notification issued by a municipal committee constituted under the old Act directing certain dealers to obtain license under a provision of the new Act and issued before the Act came into force is *ultra vires*.

Notification is not a bye-law, rule or regulation. 1921 Mad. 713; 66 I. C. 429.

Notification extending certain provisions of the Act—Provisions amended - Amended provisions do not extend without fresh notification.—Ss. 178 and 185, Municipalities Act, II of 1916 were made applicable to notified areas, but the provisions of the amended Act of 1919 were not extended to such areas.

Held: that a person could construct a building after giving notice to the Board without waiting to get sanction as provided under the amended Act.

Held further: that as Ss. 178 and 185 were not repealed and re-enacted, S. 6, General Clauses Act, had no application. 1933 All. 617.

Effect of the Act on cases already pending.—S. 2 provides that pending proceedings which may have been commenced under the repealed Act, shall be deemed to have been commenced under the new one, but though commenced before the passing of the new Act they must, to be effectual, be continued under its provisions and can only be used to enforce rights and powers in existence at the time when it is sought to enforce them. 21 Cal. 528; 3 B. L. R. 584.

Rules, etc., made.—"Made" means duly and lawfully made, so any rule or bye-law which is *ultra vires* according to the repealed Act will not have any force or will not become *intra vires* under the new Act. 21 Cal. 837. The presumption, however, is that all rules or bye-laws made under any Act are lawfully and validly made. The Court dealing with any such rule or bye-law ought to presume that they have been validly made or sanctioned unless this presumption is rebutted. 9 All. 493.

Where a bye-law prohibiting the covering of drains had been passed under one Act and was replaced by a similar bye-law under the repealing Act it was held that a breach, *viz.*, the covering of the drain with a plank began under the former bye-law and continued under the later bye-law was not excluded from the operation of the later bye-law and was an infringement of it and that the offender was rightly convicted under it. 23 Mad. 213.

Amendment of Act during pending proceedings.—New Act cannot have retrospective effect unless the retrospective effect is specially given. 54 Mad. 627; 1931 Mad. 831.

Prosecution under the old Act.—Prosecution under the old Act cannot lie though the notification under the old Act will be deemed to have been issued under the new Act. Prosecution must be under the new Act. *Cf.* 55 Cal 1206; 1928 Cal. 484.

Where the procedure for recovery of arrears is changed under the new Act.—A prosecution under the old Act cannot lie under the old Act for arrears due under the new Act. 138 I. C. 370; 1932 Mad. 660.

Contracts entered into.—The contract must be a valid contract under the Act. A certain municipality sold a shop to the plaintiff with an agreement that the shop was to be used for selling meat. Plaintiff was prevented from selling meat in that shop. Plaintiff under similar provisions of the Bombay District Municipal Act contended that the right created by the municipality was saved by S. 2 of the Bombay District Municipal Act, 1901, and that the Municipality had no right to prevent plaintiff from selling meat in the shop: *Held* that the municipality could not enter into such a contract under the Municipal Act in vogue at the time that the shop was sold. 2 I. C. 363.

Taxes assessed.—Under Act XX of 1891 the taxes leviable by the year are under S. 45 (8), *provisio (c)*, leviable by

the calendar year from 1st January to 31st of December. Under the Act which was repealed by Act XX of 1891 the tax was leviable by the financial year. *Held* that by virtue of S. 2, cl. (2) of Act XX of 1891 the taxes levied under the old Act became payable according to the calendar year. P. R. 4 of 1898.

When a tax is imposed under the repealed Act and a portion or instalment of such tax is paid before the coming into force of the new Act, S. 2 will not debar the Committee from imposing the same tax at a higher rate and from claiming the remaining portion or instalment of the tax at a higher rate. *Cf.* 8 Mad. 429.

Conflict of Municipal powers with Court's decree.—Section cannot be read in such a way as to prevent the municipal committees from exercising for all times the powers conferred by S. 126 of the Act in respect of drains which are a nuisance. Therefore even where a person has obtained a decree against his neighbour declaring his right to pass water along a drain the Municipal Committee is empowered to close the drain if it is injurious to public health. *Cf.* 26 I. C 781 ; 12 A. L. J. 1102.

So far as may be.—The bye-law or rule in existence must also be consistent with the provisions of the new Act.

Sanction under repealed Act.—Sanction to rebuild granted under the old Act must be considered to be granted under the present Act and hence it can only be availed of in one year. P. R. 9 of 1905.

Definitions.

3. In this Act, unless there is something repugnant in the subject or context,—

(1) "annual value" means—

(a) in the case of land, the gross annual rent at which it may reasonably be expected to let from year to year :

Provided that, in the case of land assessed to land-revenue or of which the land-revenue has been wholly or in part released, compounded for, redeemed or assigned, the annual value shall, if the Local Government so direct, be deemed to be double the aggregate of the following amounts, namely:—

(i) the amount of the land-revenue for the time being assessed on the land, whether such assessment is leviable or not ; or when the land-revenue has been wholly or in part compounded for or redeemed, the amount which, but for such composition or redemption would have been leviable; and

- (ii) when the improvement of the land due to canal irrigation has been excluded from account in assessing the land-revenue, the amount of owner's rate or water-advantage rate, or other rate imposed in respect of such improvement;
- (b) in case of any house or building, the gross annual rent at which such house or building, together with its appurtenances and any furniture that may be let for use or enjoyment therewith, may reasonably be expected to let from year to year, subject to the following deductions:—
 - (i) such deduction not exceeding 20 per cent. of the gross annual rent as the committee in each particular case may consider a reasonable allowance on account of the furniture let therewith;
 - (ii) a deduction of 10 per cent. for the cost of repairs and for all other expenses necessary to maintain the building in a state to command such gross annual rent. The deduction under this sub-clause shall be calculated on the balance of the gross annual rent after the deduction (if any) under sub-clause (1);
 - (iii) where land is let with a building, such deduction not exceeding 20 per cent. of the gross annual rent, as the committee in each particular case may consider reasonable on account of the actual expenditure, if any, annually incurred by the owner on the upkeep of the land in a state to command such gross annual rent;

Explanation (I).—For the purposes of this clause it is immaterial whether the house or building, and the furniture and the land let for use or enjoyment therewith, are let by the same contract or by different contracts, and if by different contracts, whether such contracts are made simultaneously or at different times;

Explanation (II).—The “gross annual rent” shall not include any tax payable by the owners in respect of which the owner and tenant have agreed that it shall be paid by the tenant:

- (c) in the case of any house or building, the gross annual rent of which cannot be determined under clause (b) 5 per cent. on the sum obtained by adding the estimated present cost of erecting the building, less such amount as the committee may deem reasonable to be deducted on account of depreciation (if any) to the estimated market value of the site and any land attached to the house or building:

Provided that—

- (i) in the calculation of the annual value of any premises no account shall be taken of any machinery thereon;
- (ii) when a building is occupied by the owner under such exceptional circumstances as to render a valuation at 5 per cent. on the cost of erecting the building, less depreciation, excessive, a lower percentage may be taken:

Notes.

Section 42, clause (3), of the old Act.

The present definition has, however, been considerably altered. Provision has been made for allowing certain deductions on account of furniture or repairs. Provision has also been made for calculating annual value of buildings which are not usually let to tenants and of buildings whose gross rental value cannot be otherwise determined.

The definition is very important for purposes of taxation under S. 61. Some of the taxes under this head are leviable on the annual value of buildings.

For the purpose of assessment of these taxes the annual value will have to be determined in accordance with the definition.

Analogous Law:—

- S. 101, Ben. District Municipal Act, of 1884
- S. 128, Beng. Municipal Act, XV of 1932.
- S. 98, B. & O. Municipal Act, 1922
- S. 3 (1) Bom. Municipal Boroughs Act, 1925.
- S. 3 (11), Bom. District Municipal Act, III of 1901.
- S. 154, Bom. City Municipal Act, III of 1888.
- S. 46 (4), Burma Municipal Act, III of 1898.

- S. 127, Cal. City Municipal Act of 1923.
- S. 73, C.P. Municipal Act, 1922.
- S. 100 (2), Madras City Municipal Act, 1919.
- S. 82 (2), Madras District Municipal Act, V of 1920.
- S. 80 (2), Rangoon City Municipal Act, 1922.
- S. 140, U P. Act, 1916.
- S. 3 (4), Punjab District Boards Act, 1883.

English Law:—

- S. 4 of Public Health Act, 1875.

Annual Value.—In English rating Acts the words “annual value” or “rating value” are in familiar use and have long received a settled construction. They have always been held to mean annual letting value. 11 Cal. 275.

Gross Rent.—It will be observed from the definition that gross rent is the measure of annual value. Annual value is often, especially, in dealing with small property ascertained by a calculation which starts from the rent reserved in the lease and actually paid. But that rent is by no means invariably the measure of rateable value; additions

have frequently to be made for that purpose. And this is so partly because there are many classes of property of which rents are not fixed from year to year; and the rent reserved under a tenancy for a term will usually be different from that reserved under a yearly tenancy, and also because the rent payable under the tenancy may have been fixed long before the period at which the rateable value is being ascertained and because rents are often fixed for considerations other than the actual value of the property in the market. For instance, a premium may have been paid on the commencement or transfer of the lease; or the premises may have been let by a landlord to the son of a former tenant at a somewhat lower rent than could have been obtained from a member of the general public. Or again, business premises may be let by a widow of the former owner of the premises to the person who is going to carry on her husband's business at a lower rent than she could have obtained from an outsider, or, on the other hand one of several sons who carries on the father's business may pay to the heirs of the father a larger rent than the premises are worth in the market in order to compensate his brothers for their exclusion from the business. Again, to mention a very important class of cases, the majority of public houses are owned by brewers and let on "tied" rent, i.e., rent which is lower because the tenant covenants to buy liquors of his landlord; in other words, the tenant pays a part of his rent in the extra price of beer. Rent then is admissible as evidence in ascertaining rateable value, but is not necessarily the conclusive criterion. It is not the amount which the landlord ultimately receives that is the test. The test is the rent which the tenant may reasonably be expected to give: *Smith v. Churchwardens of Birmingham*, (1889) 22 Q. B. D. 703; *East London Rail. Joint Committee v. Greenwich Union*, (1907) 71 J. P. 460. It has never been doubted that the rent which is actually being paid by the occupier does not necessarily indicate what is the rent which a tenant might be reasonably expected to pay. *London County Council v. Erith*, (1893) A. C. at p. 588. *Vide* "Ency. of Local Government Law," Vol. V, pp. 355-360.

According to the terms of a lease a tenant was to pay Rs. 20 per mensem and keep the garden properly watered, and if he did not want to water the garden or failed to do so the landlord was to arrange for watering of the garden and the tenant was to pay Rs. 50 and where the tenant chose the latter course : *Held*, the annual value was the annual rent at Rs. 50 per mensem. 31 M. L. J. 315; 35 L. C. 589.

May be reasonably expected to let.—In case of premises subject to "annual tenancy" there is not much difficulty in

determining the annual value; the annual rent in most cases being taken as the annual letting value. The difficulty arises in cases of buildings in occupation of owners themselves or which are in occupation of persons who do not pay any rent for such occupation. The subject is fully discussed in a Madras case reported in 10 Mad., p. 38, where the principles of determining the annual value of buildings not usually let are discussed:—

“The Lying-in-Hospital at Madras, built and supported by Government having been assessed by the Municipality as on a rental of Rs. 1,000 a month, the Magistrate on appeal reduced the assessment, finding that Rs. 7,920 per annum would be a reasonable assessment, having regard to the letting value of the buildings in neighbourhood; but, at the request of the Municipality, referred the following questions to the High Court:—

“Whether (as contended by Government) the property in question should be valued and assessed on the rent which on the property being offered in the open market without reserve, a person desirous of securing it would have to pay; or

“Whether (as contended by the Municipality) it should be valued and assessed on the highest reserve rent which an owner of the property offering it in the open market would reasonably demand and below which sum he would not be willing to let:

“Held the standard value was what the hypothetical tenant requiring the building for use as a hospital would be willing to pay rather than rent a less suitable building and adapt it to his requirements at his own expense, and that in this sense the contention of the Municipality was correct.’

“In the course of the judgment it was observed ‘... The standard of value is certainly, as observed by the Magistrate, the value of the property to the owner which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant on the terms laid down by the Legislature’

“Again the standard value is the value which the building possesses at the time the assessment is made. Hence the value of the property in the past or future is immaterial. The present value is not the value of any exceptional year but the value which under present circumstances the building would be worth to let in an average year. . . In letting a building from year to year the rent would ordinarily be regulated by two matters as observed by Blackburn, J., in the *Queen v. London and North-Western Railway Co.*, L. R. 9, Q. B., 134, on

the one hand by the benefit which the tenant could be likely to derive from the occupation, because he would not give more; on the other hand, by the nature of the property, such as local situation, or the number of persons there are who could supply him with an equally eligible building and be willing to let it to him; for, while he would not be willing to give more than he expects to gain by the occupation, he would not give even that if he could get a similar building at a lower price. Further, in rating property, it must generally be assumed that the hypothetical tenant would be in the same position and would use the property in the same way as the party, rated, for, the object is to ascertain its intrinsic value to the owner in its present condition. In the *Queen v. The School Board for London*, 55 L. J., Q. B. D. 53, it was contended, *inter alia*, for the respondent, before a Divisional Court of Queen's Bench, that the rent which the School Board might be supposed to be willing to give for the School premises if the Board were in the market anxious to rent premises suitable for use as School, was a fair test of rateable value. On the other hand, it was urged for the appellants — 1st, that the School Board owning the premises should not be supposed to be in the market anxious to rent premises, but should be excluded from the number of hypothetical tenants who might be supposed to be willing to rent the school premises, and 2ndly, that the only true indication of rateable value was the rent for which the premises could in their present condition be let to a hypothetical tenant from year to year, supposing they were not used for Board Schools but were applied to any other use or purpose for which they could be made available by a tenant. The respondent's contention was allowed and appellant's objections were overruled. Cave, J., said : ' When you want to find what a hypothetical tenant will give you must not take a man who does not want the premises for the use for which they are built, but wants to use them for some other purpose, unless you can first show that they cannot be let for the purpose for which they are built. If they cannot be let for the purpose for which they are built, then, no doubt, you may go and see what you can do with them for some other purpose and the best subsidiary purpose you could put them to. But, so long as they can be let for the purpose for which they are built, it seems to be idle to say " Well if this man were not occupying them, they could not be let to any body else." '

" In appeal the decision was upheld and Lord Justice Brown says: ' The test of rateable value was the rent for which the premises might reasonably be expected to let to a tenant.' In estimating that, in the present case, the rent for which the premises might be reasonably expected to let to

the Board themselves may be considered, for how could the only body likely to require the premises be excluded from the estimate, that is, why should the only body likely to require or use the premises be excluded from the estimate of rent payable?"

"Having these principles in view, we are of opinion that the Lying-in-Hospital should not be valued at the rent which it would fetch if it were offered in the open market without reserve. Admittedly there is but one building in Madras specially eligible for use as a Lying-in-Hospital, and it is occupied by the owner. If the owner, the only person likely to require the premises, were excluded from the market, then the hypothetical tenant would take advantage of the absence of demand for it and pay no more than those who require it for use other than as a hospital would choose to pay"

Principles of Valuation of Salt Works.—In assessing any particular property the assessing authority must consider what a tenant from year to year with a reasonable prospect of the continuation of his lease would give for the premises. In considering this, the assessing authority must regard the then occupier as a likely tenant. This does not mean that the highest rent that can be extorted from the occupier, *i. e.*, that he would pay rather be turned out, is to be regarded as the rent which the hypothetical tenant from year to year would pay; but that the assessment is to be fixed on the highest rent that such a hypothetical tenant might reasonably be supposed to be willing to give.

The premises must be valued for rateable purposes *rebus sic stantibus*, *i. e.*, as they exist at the date of the valuation.

In assessing salt works the volume of business done by the works, the rent and royalty reserved by the lease, the actual yearly receipts with the usual deductions, the value of the land and the factory and any other buildings on the premises, any or all of these are factors which would assist the Court in determining the mode of assessment to be applied to the works, but it is no recognised method of assessment to take the output of the works at so much a ton and put the assessment at half that figure less landlord's deductions.

So long as the assessing Court applies one of the recognised modes of valuation and in doing so does not take into consideration evidence which it should not take into consideration and does not exclude evidence which it should take into consideration, it is left to that Court to select its

particular "formula" and it is no objection to the valuation to say that it should have adopted some other "formula." 42 B. 692; 46 I. C. 721.

Principles of determining annual value.—It is a canon of Rating Law that the principle of valuation of any given hereditament is the hypothetical value of the hereditament as it stands to any hypothetical tenant. It is not appropriate to take as a guide the actual rents paid for other and widely dissimilar buildings occupied on different terms of tenancy. 1929 Rang. 92.

Hypothetical tenant.—These words have been used in the above rulings. In order to arrive at the rent which a tenant from year to year under the condition supposed in the definition of annual value would give for the building or land it is necessary in many cases to invent a tenant holding under such conditions and this fictitious person is called a "hypothetical tenant." The existence of a hypothetical tenant connotes that of a hypothetical landlord and the rateable value or annual value is the estimated result of an imaginary bargain between these two imaginary persons. Ency. of L. G. Law, Vol. V, p. 355.

For purposes of determining the annual value under S. 127, of Calcutta Municipal Act the standard value upon which the rates have to be calculated is the value of the property to the owner which is to be measured, whether he occupies the property himself or lets it to a tenant, by the amount of rent per annum it would be worth to a hypothetical tenant. And to find out what a hypothetical tenant will give, such a tenant must not be taken who does not want the premises for the use for which they are built but wants to use them for some other purpose unless it can be first shown that they cannot be let for the purpose for which they are built. 103 I. C. 683; 1927 Cal. 659.

From year to year.—It is not permissible to value houses or lands on the basis that a tenant could be found who would be willing to pay more if the property were let for a term of years. The prospect of the continuance of the tenancy has, of course, to be taken into account. No body would, for instance, become a tenant of a cotton mill if it were certain that the tenancy would last only for a year. A tenant from year to year is to be considered as a tenant capable of enjoying the property for an indefinite term having a term which it is expected will continue for more than a year but which is liable to be put an end to by a notice. The property is to be rated as if it were let to a tenant from year to year and not as if it were let to a tenant

for a year. *R. v. South Staffordshire Waterworks Co.*, (1885) 16 Q. B. D. 359 at p. 369.

Property to be valued as it stands.—The property must be valued as it stands at the time when it is assessed. Its value in the past or future is immaterial. Neither past conditions nor the future possibilities are to be taken into account. A row of shops is to be valued as a row of shops and not at the rent which a Banking Company would give for it in order to convert it into a bank. *Metropolitan Board of Works v. West Ham*, (1879) L. R. 6, Q. B. 193.

Annual Value—where rent fixed under Rent Act.—In assessing buildings and land to taxation the Committee must in the absence of special circumstances take as its basis the standard rent in those cases in which the standard rent has been fixed under the Rent Act. In other cases it must fix the rateable value on a consideration of all the surrounding facts and circumstances including the effect that the Rent Act has or may have on the matter. In arriving at a decision as to the amount for which the premises may reasonably be expected to let, the assessor will consider the rent a tenant can extract from its sub-tenant but this will not be the only matter to be considered in arriving at a decision. 1924 Rang. 194.

Standard rent fixed under Rent Acts and annual value.—The Corporation of Calcutta, in assessing certain premises under S. 131, sub-section (1) of the Calcutta Municipal Act, while the Calcutta Rent Act, 1920, is in force, are not competent to increase the assessment above the standard rent—under S. 2., Sub-Section (f), cl. (i) of the Calcutta Rent Act, 1920. 103 I. C. 683; 1927 Cal. 659.

Method of assessment of a bazar. . The method of assessment of a bazar is to determine the amount of the rent which would be paid by an hypothetical tenant for the bazar property as a going concern and a hypothetical tenant taking the bazar on lease and making his offer for renting the property calculates the total gross rent which he would receive and then would make allowances for (a) stalls which would become empty and had debts; (b) necessary expenditure which he would incur in the way of cleaning, protecting, etc., the bazar, the cost of collecting rents, and so on; (c) necessary outgoings in the way of taxation and then profit and loss arising from the transactions. 1928 Rang. 98.

Annual Value of building in existence for part of a year.—The annual value of buildings which are in existence through only a portion of the year cannot be arrived at by distributing the rent for the period during which they are in existence

over the period for which they are assessed. The words "gross annual rent" and the words "reasonably be expected to let" do not permit the valuation to be fixed with reference to shorter period than one year. It is doubtful whether an unconstructed house can be called a vacant house. 1926 Mad. 1007.

Cinema.—The word "house" in sub-clause (b) is restricted to dwellings intended for human habitation. A cinema theatre is not a "house" but a "building" and the seating accommodation which is for the comfort and convenience of the audience must be taken into consideration in ascertaining the rateable value. Cf. 1926 Rang. 177; 97 I. C. 238.

Annual value in the case of a race course.—Profits made by the owner of a race course from the use of the premises is a proper basis for assessing the premises and the Contractor's test is not applicable. 1928 Rang. 129; 109 I. C. 729.

Deductions.—The several sub-clauses of clause (b) lay down the maximum deductions to be allowed for furniture and repairs. Only such expenses can be allowed to be deducted as are necessary to maintain the building in a state to command the gross annual rent. Water-rate paid by a tenant is a charge for water supplied. It cannot be regarded as an expense necessary to keep the premises in repair or to maintain them in condition to command the rent. It therefore cannot be deducted. But where a house is let on the terms of the landlord paying the water-rate the so-called rent really includes a sum paid on account of water-rate and this amount must be deducted from the so-called rent before arriving at the gross annual rent. *Smith v. Churchwardens of Birmingham*, (1888) 22 Q. B. D., p. 217.

Deduction for lavatories, fans and lights.—In assessing the rateable value of a building under a corresponding provision of City Bombay Municipal Act no deduction was allowed to the owner of the building for the cost of bathtubs and lavatories which are annexures nor was any deduction allowed for electric fans and lights which are not machinery and which when installed by a landlord become part of the premises and are necessary for the user of the premises by the tenant. 24 Bom. L. R. 476; 67 I. C. 426.

Explanation (II).—See Report of the Select Committee. The practice in Simla was to exclude the taxes from the gross annual rent if the taxes were paid by the tenant. This practice was held to be against the provision of the old Act. On reference to the Chief Court it was held that the taxes paid by a tenant to his landlord should be considered as forming part of the gross annual rent or annual value;

P. R. 46 of 1910. The explanation restores the former practice. The explanation, therefore, overrules P. R. 46 of 1910.

Annual Value under Income Tax Act—Deduction of taxes payable by owners.—The sum at which the property might reasonably be expected to let from year to year is a hypothetical sum into which rates as such do not enter at all and from which they are not to be deducted. But if and in so far as the actual bargain made by the parties is considered as evidence of the amount which a hypothetical tenant would give or the landlord reasonably expect to get the figure which matters is the figure which represents the whole of the consideration exacted by the landlord for the right to use and occupy the property as distinct from any other rights. And the tax imposed by S. 149, Calcutta Municipal Act, 1923, upon the owner, is a liability of the owner and not a tenant tax whoever might be paying it actually. The discharge thereof is a benefit to the owner. 1932 Cal. 886; 36 C. W. N. 1144.

In calculating the annual value of property under S. 9 of Income Tax Act no deduction can be made on account of the municipal tax payable thereon under S. 149, Calcutta Municipal Act, 1923: 1932 Cal. 886. *Contra see* 1929 Lah. 503 and 1931 Lah. 320 (2) where it has been held that annual value of property does not include sums paid by tenants to the owner as per agreement on account of municipal taxes payable by owner. 1931 Lah. 320 (2) ; 131 I. C. 193; 32 P. L. R. 517.

In fixing the annual value of a building the taxes payable by the tenant were not considered to be part of the gross annual rent in 1925 Rang. 115 ; 4 Bur. L. J. 101.

Contractor's test. Clause(c).—Under this sub-clause annual value can be calculated upon structural value. It is now fully established that buildings and works in the hand of public bodies or Government are rateable although no pecuniary profit is or could be made out of them. Such hereditaments are very rarely let and *ex-hypothesis* there are no profits which could afford a criterion of rateable value. The calculation of annual value in such cases is a matter of conjecture and often gives rise to difficulties noted in the above Madras ruling and 11 Calcutta 275. To obviate such difficulties sub-clause (c) is enacted which enables the determination of annual value where gross annual rent cannot be ascertained under clause (b). The method of working out the rateable value on this principle is often called the "Contractor's test." ("Ency. of L. G. Law," Vol. V, p. 360).

It would be dangerous to make the contractor's test the sole basis of rating of such properties as rice mills and indeed any industrial undertaking capable of being let. Where the hypothetical tenants' theory can be applied this theory must be followed as it is the one contemplated by the definition of "annual value." Cf. 1927 Rang. 164.

Proviso.—In England there was for some time a good deal of conflict in judicial opinions if machinery in premises could be taken into account in calculating the annual value of the premises. This conflict was mainly due to the fact that machinery as such was considered to be personal chattel and not hereditaments. This conflict was set at rest by the case of *Tyne Boiler Works Company v. Overseers of the Parish of Longbenton*, (1886) 18 Q. B. D. 81, which laid down how machinery was to be taken into account in ascertaining the rateable value of the premises, and the principles laid down in that case were affirmed by House of Lords in *Kirby v. Hunslet Union Assistant Committee*, (1906) A. C. 43. The proviso makes it clear that so far as Punjab is concerned the machinery on premises is not to be taken into account in calculating annual value. In the absence of any such proviso in Burma machinery was taken into account in assessing the Electric Supply Company of Rangoon. A question arose in Burma as to the annual value of a power station, and it was contended on behalf of the Electric Supply Company that the value of the machinery is not to be taken into account, but this contention was over-ruled and it was held that machinery placed in a building is not liable as such to taxation under the section imposing a house tax but machinery which is on the premises to be rated and which is there for the purpose of making and which makes the premises fit as premises for a particular purpose for which they are used is, however, to be taken into account in ascertaining the rateable value of such premises: 24 I. C. 395. This ruling followed the English decisions; but this opinion will be untenable in view of this proviso.

The determination in any given case of what is or is not machinery must to a large extent depend upon the special facts of that case.

Generally, the word "machinery" when used in ordinary language, *prima facie*, means some mechanical contrivances, which by themselves or in combination with one or more other movement and interdependent operation of their respective parts generate power or evoke, modify, apply or direct natural force with the object in each case of effecting a definite and specific result.

An overhead steel tank constructed by a municipality for the storage of water during hours when the demand was comparatively small and to supplement the supply when the demand is large was not held to be machinery (46 Cal. 510). This opinion was confirmed by the Privy Council in 49 Cal. 190; 67 I. C. 926; 1922 P. C. 27.

- (2) **"Building"** means any shop, house, hut, outhouse, shed or stable, whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever, and includes a wall and a well:

Notes.

The old Act contained no definition of the word "building." The words "the whole or any part" between the words "means" and "any" which had been introduced by the Amendment Act, II of 1923, have again been omitted by the recent Amendment Act, III of 1933. See Statement of Objects and Reasons, cl. (1). The word "shop" has also been added before "house" by the Amendment Act, III of 1933.

Analogous Law:—

- S. 6 (4), Bengal District Municipal Act, 1884 6 (4).
- S. 3 (2), Bengal Municipal Act, XV of 1932.
- S. 3 (1), Bihar and Orissa Municipal Act, 1922.
- S. 3 (2), Bombay Municipal Boroughs Act, 1925.
- S. 3 (2), Bombay District Municipal Act, III of 1901.
- S. 3 (s), Bombay City Municipal Act, III of 1888.
- S. 2 (2), Burma Municipal Act, III of 1898.
- S. 3 (7), Calcutta City Municipal Act, III of 1923.
- S. 2 (iv), Cantonment Act, II of 1924.

- S. 3 (a), Central Provinces Municipal Act, II of 1922.
- S. 3 (4), Madras City Municipal Act, 1919.
- S. 3 (3), Madras District Municipal Act, V of 1920.
- S. 3 (iv), Rangoon City Municipal Act, 1922.
- S. 2 (3), U. P. District Board Act, X of 1922.
- S. 2 (2), U. P. Municipalities Act, 1916.

English Law:—

- S. 11, Public Health Act, 1925.

It will be noticed that the term "building" is defined in most of the municipal Acts in force in India. Some Acts define the term as including a wall. The definition of "building" and that of the expression "erect or re-erect any building" are very important in view of the control of the municipalities over construction of buildings within municipal areas.

Building.—The meaning of the word "building" in "Webster's Dictionary" is a "fabric or edifice constructed;

a thing built." It includes a structure of any kind. In law anything erected by art and fixed upon or in the soil composed of different pieces connected together and designed for permanent use in the position in which it is so fixed is a building. Thus a pole fixed in the earth is not but a fence or wall is ("Century Dictionary").

The following structures have been held to be buildings:

(1) A *kutta* which is permanent in character and which serves as a broad extended doorstep or raised platform of communication with the public road: Rat. Un. C. C. 483 (1889).

(2) A tin roofed shed: 39 A. 482 ; 43 I. C. 307.

(3) An addition to a building: 1 Mad. L. J. 371.

(4) A corrugated iron shed. 7 C. L. J. R. 243.

(5) Construction of a new and additional wall which materially enlarges a courtyard: 26 I. C. 651.

(6) A compound wall: 45 B. 1151 ; 63 I. C. 153.

(7) Cowshed is a building: 1926 Nag. 281; 92 I. C. 796.

(8) A wooden shed of dimensions 10×8×8 feet roofed by tin sheeting and used for sleeping purposes for night was held to be a building though mounted on wheels on which permitted it to be moved from one part of the site on which it stood to another: 5 Lah. 543; 1925 Lah. 252; 85 I. C. 379.

(9) Where in the definition of "building" wall is not included or where the building is not defined, it is always a question of fact whether a wall will be a building. It will depend on the height and the purpose for which it is built: 1923 Rang. 65 (2).

(10) The erection of a mere fence or boundary wall is not an offence under the Burma Municipal Act. But where such a wall is built so as to enable the occupier of the main house to use the enclosed area as part of his habitation and not merely as a boundary or fence it comes within the definition of a "building" and disobedience to an order or direction to dismantle the same is an offence under the Act : 1923 Rang. 65 (2).

(11) No doubt a temporary protection against heat or rain is not a building but a permanent *chabutra* with a shed erected on it is a "building" as defined in S. 2 (2) of the Act. It is immaterial whether the roof is or is not of a permanent character like the *chabutra*: 28 All. 199 Ref. See 1933 All. 657.

Where a *chabutra* is already in existence setting up of a roof thereon is at least altering part of a building if not

actually erecting a building and a notice under S. 186* is not illegal.

Note.—Under Punjab Act (1) will not fall within the definition of a building.

Cases reported in 15 C. W. N. 84, and 7 C. W. N. 374 and 63 I. C. 290 are based on the special wording of the Bengal Municipal Act (III of 1884) and have no application to the definition of building in the Punjab Act.

The following have been held not to be buildings:—

- (1) A wire fence: 41 B. 563; 41 I. C. 556.
- (2) A reed fence: Rat. Un. C. C. 145 (1880).
- (3) A mere wattle fence: Rat. Un. C. C. 428 (1888).
- (4) Enclosure of canvas screens: 28 All. 199.
- (5) A grain pit: 20 I. C. 611.
- (6) A *chabutra* is not a building requiring sanction of the committee – a building, in the absence of any definition of the term, means a structure with a roof. *Chabutra* if it does not encroach on a street or drain cannot be regarded as a building requiring permission of the committee before it is built: 1921 Nag. 147 (2)=64 I. C. 274.

[For further notes *see* under Ss. 3 (5) and 189.]

- (2a) “Building line” means a line beyond which the outer face or any part of an external wall of a building may not project in the direction of any street, existing or proposed:

Notes.

This expression has been introduced in the Act by Amendment Act, III of 1933. The definition will exclude projections and *tharas* which will have to be considered as outside this line. This interpretation clause has been rendered necessary by the introduction of S. 192.

- (3) “Bye-laws” and “Bye-law” mean, respectively, the regulations made or to be made by the Committee at a special meeting under the authority of this Act and any one of such regulations:

Notes.

Analogous definitions.—*Cf.* S. 2 (3) of U. P. Act II of 1916.

S 3 (3), Bengal Municipal Act, 1932.

S. 2 (3), Burma Municipal Act, 1898.

S. 3 (8), Calcutta City Municipal Act, 1923.

S. 3 (4), Madras District Municipal Act, V of 1920.

S 3 (5), Rangoon City Municipal Act, 1922.

*Corresponds to S. 195 of Punjab Municipal Act.

Origin of the word bye-law.—The word “bye-law” meant originally a law made in and for “bye” or “burh,” i. e., a fortified town or vill—regulations issued by local authority for the regulation of a borough. But the word has now attained a wider significance, and includes all orders, ordinances, regulations and statutes made by any authority subordinate to parliament or legislature.

The subordinate authority must, of course, have power expressly or impliedly conferred on it to legislate on the matters to which the bye-law relates. And the bye-law which that authority makes must be reasonable in itself, not be retrospective, and it must not be contrary to the general law of the land.

The municipalities are empowered to make bye-laws under sections 31, 167, 188, 189, 190, 197 and 198.

Procedure.—The bye-laws under the Act should be made at a special meeting and the committee should follow the procedure laid down in Ss. 200 and 201.

Distinction between bye-law and rule.—The Act draws a clear distinction between a bye-law and a rule: a bye-law is one which is made by committees in the exercise of powers conferred upon them by the Act, while a rule is one which may be made by the local Government under powers reserved under S. 240.

A bye-law is generally binding on the public and its breach is an offence, while a rule is departmental and binding on municipal committees and its breach is generally not an offence.

Characteristics of valid bye-laws.—The following essential characteristics of a valid bye-law are well settled:—

I. It must not be “ultra vires.”—The statement means that the bye-law must be confined to the limits of the subject matter handed over by the legislature to be dealt with by the subordinate authority and must not impose any restriction not authorised by the language of the statutes. A bye-law must be so framed that its provisions come within the scope of the particular section under which it is made. The following are a few instances of bye-laws which have been held to be *ultra vires*:—(1) A bye-law framed by a municipality provided that every place used for drying fish or fins shall be surrounded by a wall not less than six feet in height or with a fence made of bamboo mats, &c.: Held that the bye-law was *ultra vires* of the powers conferred by S. 33 (b), Bombay Act, VI of 1884 and S. 48 (b) (iii) of Bombay Act, III of 1901; as both these sections extend only to the regulation of business

within the place used and give no authority to require external structures. 4 Bom. L. R. 585.

(2) A bye-law under S. 559 (18) of the Calcutta Municipal Act of 1899 purporting to create a continuing breach which is outside the scope of and fails to comply with the provisions of S. 561 requiring that there should be a notice after the breach is *ultra vires*. 10 C. L. J. 623; 4 I. C. 259; 37 C. 545.

(3) S. 55 of Public Health Act empowers the making of bye-laws with respect to the removal by the occupier of dust, ashes, rubbish, filth, manure and dung. A bye-law directing all occupiers to remove all snow from foot-paths opposite their respective premises was, therefore, held to be *ultra vires*. *Brown v. Holyhead L. B.*, 27 J. P. 184.

(4) A general power given to a canal company to make bye-laws for the good government of the company and for the good and orderly use of the navigation was held not to authorize the making of a bye-law prohibiting Sunday navigation. *Calder & Hebble Navig. Co. v. Pilling*, 14 L. J. Ex. 223.

(5) By S. 172 of the Public Health Act, 1875, a local authority may license the proprietors of pleasure boats and vessels and the boatmen or other persons in charge thereof and may make bye-laws for regulating the numbering and naming of such boats and vessels and the number of persons to be carried therein... and the qualification of such boatmen or other persons in charge.... It has been held that these words do not empower an authority to, make a bye-law that proprietors of boats (not themselves acting as boatmen) must take out a license. *Byrne v. Brown* (1893) 57 J. P. 741.

(6) S. 116 (1) (j) of the Berar Municipal Act, 1886, empowers a committee to make rules for certain purposes and generally for carrying out the purposes of municipal law. S. 79 authorizes the closing of streets temporarily for repairs. The Camp Municipal Committee of Amraoti made a bye-law under S. 79, read with S. 116 (1) (j), prohibiting within certain limits a particular class of traffic on certain roads—the effect of the bye-law being to deprive the public of a right in respect of the prohibited traffic which it had long enjoyed. Held that the bye-law was illegal and *ultra vires* as the sections relied upon do not empower the committee to close the street to a particular kind of traffic.* 51 I. C. 341.

* Under powers conferred by S. 188 (1) (p) such a bye-law would be perfectly valid in the Punjab.

(7) Similarly it has been held that a statutory power to "regulate and govern" a trade by bye-laws will not justify a total prohibition of such trade within a considerable area where there are no grounds for suggesting that it could not be carried on without causing a nuisance. *Toronto Corp. v. Virgo*, (1896) A. C. 88.

(8) Under S. 128 (b) (1) of Municipalities Act, I of 1900, a municipal committee has power to make rules, *inter alia*, for regulating and inspecting places of public entertainment and resort and for charging fees for the use of such places. Allahabad Board promulgated a rule under the above section by which no person was allowed to sell or expose for sale any goods in any street or public place under the control of the board except by permission of the board and on payment of such fee as the Market Committee may fix. One Imami was prosecuted for the breach of the above bye-law as he was found selling goods on a strip of land alongside a road. The board contended to read the words "place of public entertainment and resort" distributively. *Held* the bye-laws do not empower regulation of and charging fee for use of streets which though places of public resort are not places of public entertainment, and that the rule was *ultra vires* of the powers conferred by S. 128 (b) (1). 35 All. 24; 16 I. C. 333.

(9) A bye-law prohibiting the sale of fish or meat outside the market was held to be *ultra vires* of S. 70 of Bombay Act, VI of 1873. 1895 Rat. Un. Cr. C. 797.

(10) Power to make bye-laws given to municipalities and to provide penalties for breaches thereof does not carry with it the power to adjudicate or even to determine who shall adjudicate whether a person has broken the bye-law. Hence bye-laws purporting to give the Managing Committee of the municipality power to try offenders against such bye-laws or to levy fine upon them are *ultra vires*. 8 B. H. C. R. 39.

(11) **Evasion of payment of octroi duty.**—A bye-law ran as follows:—"Any evasion or attempt at evasion of payment of octroi dues shall render the offender liable to a fine of not exceeding Rs. 50." *Held* that the above bye-law was invalid as it made no distinction between lawful and unlawful, honest or dishonest evasion. Every person is at liberty to evade the payment of any tax by any lawful and honest means, not expressly prohibited by competent authority. P. R. 27 of 1889 Cr.

(12) A bye-law must comply with the provisions of the enactment under which it is made. The definition of

“occupier” as given in the bye-laws of Delhi Municipal Committee framed under S. 188 (h) is *ultra vires* so far as it is inconsistent with the definition of the term given in S. 3 (10) of the Act itself. A bye-law, therefore, which makes the owner of a building responsible in a case where he is not in actual possession of the building for the use of the building in a particular manner by his tenants, where he has no legal power to control the acts of his tenant with regard to the use of the premises leased is manifestly unjust and hence unreasonable. 2 L. 239; 64 I. C. 129.

(13) Where the term “erection of a house” does not include the mere erection of a wall apart from its erection as part of a scheme for the erection of a house itself within S. 241 corresponding to S. 190, Punjab Municipal Act, bye-law prohibiting the erection of a compound wall is *ultra vires*. 1922 Pat. 56.

(14) Under Madras City Municipal Act the corporation is authorised under S. 349 (2) to frame bye-laws providing for the regulation of the time and mode of collecting taxes, duties and tolls, and under S. 129 (1) the corporation is entitled to levy tax on timber brought in the city at such rates and in such manner as may be determined by the Council and on export is bound to refund a portion. In pursuance of these provisions the corporation made bye-laws regulating the refund of the tax. Bye-law No. 8 provided that 48 hours’ notice prior to export of timber must be given. A claim to enforce it by refusing refund is unreasonable and the corporation has no authority to promulgate a bye law enforceable by a penalty and so as to curtail the statutory right of the exporter to obtain a refund; the bye-law is therefore *ultra vires* on these grounds and also on the ground that it effects to impose a penalty of forfeiture without any express power to do so. 53 Mad. 722; 51 M. L. J. 650; 1930 Mad. 648.

The only penalty fixed by the bye-laws for a breach of them is that contained in Bye-law 14, namely, liability to pay a fine of Rs. 50, on conviction and power of forfeiture of the right to refund is not conferred by any bye-law for breach of bye-laws.

Bye-laws made in pursuance of a delegated authority to that effect must be consistent with the statute under which they came to be made and since the bye-law abridges the right to refund not conferred by S. 129 (1), it is inconsistent with it and *ultra vires*. 1930 Mad. 648; 53 Mad. 722.

Subsidiary legislation, by bye-law, if it is to be valid must come clearly within the powers given to the body mak-

ing it by their controlling statute and neither S. 129 (1) nor S. 349 (2) empowers the corporation to make bye-laws in regard to the refund of taxes.

(15) **Power to regulate does not include power to prohibit.**—Where bye-laws authorize the regulation of music in streets on occasions of festivals a bye-law prohibiting every kind of music in streets was held *ultra vires*. The power to regulate is given as regards some matter which is in existence and it would be a misnomer to direct regulation of a thing that does not exist. Regulation of traffic, for instance, assumes the existence of traffic. That would not empower the committee to confine every citizen to his house and to prohibit all traffic. 51 All. 435; 116 I. C. 814; 1929 All. 201.

(16) The fourth bye-law in Chapter III of the Bye-Laws framed by the Bombay Municipal Corporation, which prohibits the use of any measure which has not been duly verified by comparison with the standard measure, is beyond the powers vested in the municipal corporation under S. 461 of the City of Bombay Municipal Act, inasmuch as it purports to give the municipal corporation or the Commissioner far wider power than that conferred by S. 418 of the Act.

Clause (o) of S. 461 of the City of Bombay Municipal Act means no more than that the corporation shall have power to pass bye-laws to prevent the practice of fraud by the use of measures which are false or defective with reference to the standard measures assumed to have been verified by the Commissioner as directed in S. 418. But neither under S. 418 nor under S. 461 has the corporation the power to say that in the private markets of the city no measure shall be brought into use unless it has already been verified by the Commissioner. Rather the provisions of the Act import that if the Commissioner has reason to suspect any particular measure which is current, his method of controlling it is to verify it as directed under S. 418, and thereafter to secure that the measures of that denomination in use shall correspond with the verified measure.

There is nothing in S. 418 or under S. 461, cl. (c) of the City of Bombay Municipal Act which would justify the municipality in prohibiting the use of an honest measure in a private market, merely on the plea that if the use of that measure were prohibited, it might be easier for the municipality to ensure that the measures actually in use should not be false or defective with reference to the verified and standard measures.

The use of the honest measure of one description cannot be said to facilitate the commission of fraud by the use of the false or defective measures of a wholly different name and description. 40 I. C. 701.

(17) By S. 70 of Madras Harbour Trust Act 1886 the Board is empowered to make bye-laws for the reception, removal and portorage of goods. A bye-law framed under this section provided that importers desiring to store cargo must apply to the Secretary of the board for such space as they might require, and that such applications would be granted on such terms as the board might approve, and concluded with the reservation that the board while taking all reasonable precautions, would accept no responsibility in respect of property stored upon its premises, which would remain at the risk of the consignees or owners. *Held* that this provision was not a bye-law for reception or removal of goods within the meaning of S. 70 of the Act and was *ultra vires*. 22 Mad. 524.

(18) S. 42 of the Burma Municipal Act empowers a municipal committee to make bye-laws for rendering licenses necessary for pawnbrokers and determining the conditions subject to which they shall be granted.

A condition in pawnbrokers' licenses issued under S. 142 of the Burma Municipal Act limiting the rate of interest chargeable by pawnbrokers does modify and restrict the law which allows freedom of contract, but it is not on that account *ultra vires* of the municipal committee inasmuch as the power to limit the rate of interest is reasonably implied in the power to determine the conditions of such licenses.

It does not lie in the mouth of a licensee to object to the terms of a license which gives him rights and privileges which he would not enjoy without such licenses.

Any one who wishes to carry on the business of a pawnbroker within the Rangoon Municipality must have a license and must carry on his business in conformity with the conditions of that license, whether or not they modify the law under which business for which no license is required are carried on. 42 I. C. 756.

(19) A bye-law imposing restrictions upon traders using public markets for the purpose of carrying on their trade by prohibiting them, on pain of penalty from demanding or accepting the customary deductions on account of charity, gratuity or services of private persons, etc., is in excess of the power conferred on a municipality by S. 190 (1)* (b) of the Act, in framing the bye-law and the same is *ultra vires*. 1933 Nag. 68.

*Corresponds to S 188 (e)ii of Punjab Act.

(20) The power to enact bye-laws in restraint of trade or other civil rights must be conferred on corporations by express words of the statute and cannot be implied from wide terms as these of cl. (aa), S. 179* (1). 1933 Nag. 68.

(21) Recently municipal committees in the Punjab have framed bye-laws under S. 189 combined with S. 188 (u) regulating the erection and re-erection of *tharas* and projections. These bye-laws so far as they prohibit the re-erection of these *tharas* and projections are *ultra vires* as, under the law as it existed at the time the bye-laws were framed, no permission, written or otherwise, was necessary for the re-erection of a *thara* or projection.

Bye-laws held to be "intra vires."—A bye-law providing against evasion of payment of octroi held not to be *ultra vires* of Act IV of 1873 inasmuch as, where a tax has been lawfully imposed under that Act, S. 14 (a) would authorize a committee to frame a bye-law with the view of checking the evasion of such tax, as it would thereby carry out one of the purposes of the Act, *viz.*, the realization of a tax imposed under it. P. R. No. 12 of 1888 Cr. See also P. R. 4 of 1887.

Bye-law made under a wrong provision but the bye-law competent under another provision.—If a bye-law making body promulgates a bye-law under a provision which is inapplicable but it still had an authority to make the bye-law under some other provision of law, the bye-law may yet be quite valid. 53 Mad. 722; 1930 Mad. 648.

"Ultra vires" bye-laws.—Rules are not *ultra vires* where rule-making authority are not shown to have any authority not only under the Act but under any law whatever. 1925 Nag. 393.

Bye-laws laying down conditions under which refund can be claimed are not "ultra vires."—No bye-law of the municipality can cut down an exemption allowed by the legislature. If the municipality has its bye-laws framed so as to cut down that exemption such a bye-law would be invalid. But in the case of a terminal tax there is no such exemption given by the statute. It is only under the bye-law that any one is entitled to the refund of the terminal tax at all. It is competent for the authorities, which out of mere grace allow an exemption, to prescribe and lay down under what conditions it will grant that exemption. 1921 Sindh 175.

*Cf. S. 188 (v).

Maintenance and repairs of roads.—Where the district board is enjoined to provide for the repair and maintenance of roads, the district board framed bye-laws punishing people encroaching on public roads; it was held the district board had power to make bye-laws for carrying out all or any of the purposes of the Act. The bye-laws were held to be not *ultra vires* and it was held that the district board has impliedly, if not expressly, power to provide for, by its bye-laws, the punishment for encroachments over its roads in order to carry out the provisions of S. 78 of the Act, namely, to provide for the repair and maintenance of its roads. 1922 Pat. 545.

II. The bye-law must be certain and positive in its terms.—Certainty means that it must contain adequate information as to the duties of those who are to obey: *Kruse v. Johnson*, (1898) 2 Q.B. 91. In *Nash v. Finlay*, (1902) 66 J.P. 183, 85 L.T. 682, a bye-law that no person shall wilfully annoy passengers in the streets was held to be void for uncertainty on the ground that there were other bye-laws dealing with the specific nuisance and this particular bye-law did not give adequate information of what it intended to prohibit.

Positiveness in a bye-law is akin to, though not identical with, certainty; it means that the bye-law must contain a definite and imperative prohibition or command so that persons to be affected by it may have no doubt as to whether they must or need not obey it.

III. Bye-laws must not be repugnant or inconsistent with the general law or with the provision of the municipal Act. If the bye-law is inconsistent with any provisions of the Act it is *ultra vires*. All bye-laws which are contrary to the laws or statutes of the country are void. A bye-law is not repugnant to the general law merely because it creates a new offence and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful. It is repugnant if it expressly or by necessary implication proposes to alter the general law of the land. Again, a bye-law is repugnant if it adds something inconsistent with the provision of a statute creating the same offence; but if it adds something not inconsistent that is not sufficient to make the bye-law bad as repugnant. *Gentel v. Rapps*, (1902) 1 K. B. 160. "A bye-law must necessarily add something to the common law, otherwise it would be idle" (*R. v. Saddler's Co.*, [1855] 3 El. & El. 42 per Martin, J.). The following cases illustrate the working of this rule against repugnancy: an Act for the regulation of a common provided for the election of Conservators and declared that

“any tenant or occupiers of a dwelling house” of specified value should be qualified as an elector; the Conservators, however, in the exercise of their power of making bye-laws purported to restrict the right of voting to persons whose names appeared on the parliamentary register; it was held such a bye-law was invalid in being inconsistent with the provision of the statute. *Purvis v. Wimbledon Com. Cons.*, (1890) 62 L. T. 529. Again, the general law in dealing with persons who travel on a railway without paying the fare makes fraudulent intention the gist of the offence. A bye-law to the effect that any person not holding a ticket should forfeit a sum of money whether guilty of fraudulent intention or not would be bad as adding a provision inconsistent with the terms of the statute: *Dearden v. Townsend*, (1865) L. R. 1 Q. B. 10. So, too, if a statute imposes a penalty for a certain offence a bye-law cannot validly impose a larger penalty for the same offence.

Another instance of a bye-law inconsistent is afforded by the case reported in 44 I. C. 744. S. 86 (2) [corresponding to S. 172 (2) of the Punjab Act] of the Berar Municipal Act requires a notice for the removal of certain encroachments and failure to comply with notice is punishable under S. 139 (=219 of our Act). Rules 10 and 30 made under S. 116 make it punishable to construct any encroachment or projection without written permission of the committee. The effect of the rule is to do away with the notice required by S. 138 for punishment of an act declared unlawful by S. 86. The rule was, therefore, held to be *ultra vires*; when a statute expressly deals with any matter and lays down certain procedure, it is not competent to the committee to repeal any provision of the Act under which powers to make bye-laws is given. 44 I. C. 744*.

Repugnancies in bye-laws made by different authorities.—In order to determine whether a bye-law framed by a local body duly authorized in this behalf by an Act of provincial legislature and sanctioned by Government—in this case a bye-law made by a municipal corporation of Calcutta under S. 559 (18) of the Calcutta Municipal Act prohibiting the leaving of cart or carriage in a public street unattended—is repealed by implication by a rule made subsequently by the local Government under the authority of an Act of the Imperial Legislature—in this case a rule made under the Motor Vehicles Act, S. 11 (2) (f) (i) prohibiting a motor vehicle from being allowed to stand in a street or public place unattended—the test is whether there is a

*See also 2 L. 239 quoted on p. 26 supra under *ultra vires* bye-laws.

repugnancy between the bye-law and the rule, where, as in this case it is possible to read the bye-law and the rule together in such a way as to make one supplement the other, there is no repugnancy and consequently no repeal by implication; the mere fact that offences contemplated by the bye-law and the rule are not identical is immaterial. 61 I. C. 641.

IV. It must be general and not particular in its application.—It must not be unfair or discriminating. Authority is frequently given to make bye-laws for the regulation of particular classes of trades, and it is, of course, inevitable in every case that restrictions imposed by bye-laws should prove more inconvenient or prejudicial to some members of the public or of a particular trade than to others. Such undesigned and inevitable inequalities in its operation do not render invalid a bye-law, the general effect of which is intended and calculated to work for the good of the community at large by promoting order or suppressing nuisances; but it would be impossible to justify a bye-law calculated to benefit or injure an individual or class without any corresponding advantages to the public. In *Kruse v. Johnson* (1898) 2 Q. B. 91, Lord Russell, C. J., laid down that it was the duty of courts to condemn a bye-law as unreasonable “if they were proved to be partial, unequal in their operation as between different classes; if they were manifestly unjust.”

V. It must be reasonable.—Generally the courts have declined to interfere with the decision of the municipal committees and have refused to substitute their own judgment for that of the committees. But in case of bye-laws the courts in England assumed jurisdiction to sit in judgment upon the bye-laws of committees passed with all proper formalities and within the limits of authority conferred upon them by the legislature and to declare bye-laws to be invalid if in the judgment of the court they were unreasonable and to ignore the fundamental difference which exists between other corporation and municipal corporations whose councils are representative bodies elected by the people to which have been entrusted powers of subordinate legislation. The mistake was not rectified till the case of *Slattery v. Naylor* (1888) 13 A. C. 446 came before the Judicial Committee of the Privy Council. The jurisdiction to set aside bye-laws in extreme cases was not given up; the theory that a bye-law could be treated as unreasonable merely because it does not contain qualifications which commend themselves to the minds of the judges appears to have been abandoned. Another step forward was taken in 1898

when a specially constituted court of seven Judges in *Kruse v. Johnson* (1898) 2. Q. B. 91 laid it down that in determining the validity of bye-laws made by public representative bodies the Court ought to be slow to hold that a bye-law is void for unreasonableness and that a bye-law ought to be supported unless it is manifestly partial or unequal in its operation or unjust or made in bad faith. The bye-law in question prohibited any person from playing music or singing within fifty yards of any dwelling house after being requested by a constable or inmate to desist. It was objected that the bye-law was unreasonable because it was not confined to acts causing an annoyance or nuisance ; the Court considered *de novo* the whole question of reasonableness or otherwise and the test to be applied. In the first place a distinction was drawn between bye-laws made by bodies of a public representative character, and those made by railway or dock companies and other corporations of a similar character, carrying on business for their own profit, though incidentally for the public benefit. With regard to the latter class, it was conceded that the Courts should exercise a jealous supervision and guard against any unnecessary or unreasonable interference with the convenience and the rights of the public ; the bye-laws of local authorities, however, ought to be considered from a different standpoint. It must be remembered that such bye-laws owe their existence to the fact that Parliament has, in the exercise of its discretion delegated to representative and popularly elected bodies the power of exercising their judgment as to what bye-laws are suited to the needs of their respective districts, and further that this power is accompanied by certain safeguards, such as the necessity for antecedent publication with a view to eliciting objections, and for confirmation by the Central Executive ; moreover, bye-laws are not immutable ; and in the event of real inconvenience public opinion can secure their repeal or alteration. For these reasons " they ought to be supported if possible. They ought to be, as has been said " benevolently " interpreted ; and credit ought to be given to those who have to administer them, that they will be reasonably administered. . . . I do not mean to say that there may not be cases in which it would be the duty of the Court to condemn bye-laws made under such authority as these were made, as invalid because unreasonable. But unreasonable in what sense ? If, for instance, they were found to be partial and unequal in their operation as between different classes ; if they were manifestly unjust ; if they disclosed bad faith ; if they involved such oppressive or gratuitous interference with the rights of those subject to them, as could find no justification in the minds of reasonable men,

the Court might well say "Parliament never intended to give authority to make such rules; they are unreasonable and *ultra vires*." But it is in this sense, and in this sense only, as I conceive that the question of reasonableness can properly be regarded; a bye-law is not unreasonable merely because a particular judge may think it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may think ought to be there. Surely, it is not too much to say that matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local Government bodies, such representatives may be trusted to understand their own requirements better than Judges" (per Lord Russel, C. J.)

The reasonable and equitable nature of bye-laws framed by local bodies is a matter open to the criminal courts to consider when offenders against the bye-laws are put up for prosecution before them.

A bye-law, or any rule or order of the kind, as to the taking out of a license is not bad merely because the license fee is excessive. The questions of the legality of ordering that a license should be taken out and that of the reasonableness or unreasonableness of the fee charged for such license are separate and independent questions, and the legality of the order does not depend on the fees being reasonable. 1933 Mad. 148. 140 I. C. 524.

A bye-law framed under S. 128 (c) of N.-W. P. and Oudh Municipalities Act, I of 1900, prohibiting servants from using a particular road was held to be unreasonable and was not given effect to. 24 All. 439.

For English cases in which bye-laws have been rejected as unreasonable see Lumley's "Public Health," 10th Edition, pp. 456 and 459.

VI. Lastly it must be properly enacted according to all the formalities required by law.—The law requires that the bye-law must be made at a special meeting of the committee and the bye-laws framed must strictly comply with conditions of previous publication and confirmation as laid down in Ss. 200 and 201. However, it must be noted that previous publication or confirmation of local Government will not make a bye-law valid if it is otherwise invalid. 51 I. C. 341.

Presumption as to validity.—In the case of rules and bye-laws made and sanctioned by municipalities, the presumption obtains that they have been duly made and sanctioned. The court dealing with such rules and bye-laws ought to presume, until some evidence is given to destroy such pre-

sumption, that a municipality has used the regular and lawful procedure and that the common course of business has been followed in that procedure. 19 All. 493 and 7 O. C. 51, 20 Bom. 732.

Construction of statutes.—In construing rules or bye-laws of public representative bodies constituted by the legislature for essentially public purposes, courts have always adopted a benevolent interpretation and have been slow to condemn them as invalid or *ultra vires*. 1933 Mad. 148. See also *Kruse v. Johnson* (1898) 2 Q. B. 91 quoted above.

Strict Construction.—All bye-laws have to be carefully construed and the invariable rule is that they are to be construed in favour of the subject: 24 All. 439; 35 All. 24. Bye-laws or rules encroaching on the rights of the subject should as far as possible be so interpreted as not to militate against and curtail the rights of the subject as regards property. 28 All. 199.

Distinction between law as enacted and law as promulgated by bye-law or statutory rules.—Now “delegated” legislation falls under two main heads: first, rules, regulations, and bye-laws under the statute which provides that they shall have the same effect as if enacted therein, and secondly, rules, regulations and bye-laws made under the statute which does not in terms provide that they shall have the same effect as if enacted therein. The first usually consists of statutory rules, bye-laws and regulations made by responsible authorities concerned with local Government; the second usually consists of bye-laws and regulations made by persons, societies or corporations who are conducting commercial or other enterprises, whether of a public character or not. Now the distinction between the two is this that there the statute under the authority of which the rules, regulations or bye-laws are promulgated, itself declares that they shall have the same effect as if enacted in the statute, the validity of the rules, regulations or bye-laws cannot be questioned in any courts of law, nor can the courts quash them or reject them on the ground that they are uncertain or unreasonable. But where the statute does not so provide their validity can be canvassed in the courts of law, and the courts can reject them as unenforceable on the ground that they are uncertain or unreasonable.

But there is this difference between a rule and an enactment, that whereas apart from some such provisions as we are considering, you may canvass a rule and determine whether or not it was within the power of those who made it, you cannot canvass in that way the provisions of an Act of Parliament. This is a clear

authority for the view that, though there is no difference between a rule and an enactment where there is a provision in the enactment that the rules shall be of the same effect as if they were contained in the Act, there is a wide difference between the two when there is no such provision; and the difference is this, that though you may not canvass an Act of Parliament, you may canvass a rule. 1923 Pat. 1; 2 Pat. 134; 68 I. C. 945.

Waiver of bye-laws.—Bye-laws cannot be waived by the municipal committees unless bye-laws themselves give the committees a dispensing power or discretion. *Barter v. Bedford Corp.*, (1885) 1 T. L. R. 424. A local authority empowered to make bye-laws has no power to sanction contravention of bye-laws properly so made; and, therefore, the approval by local authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative. *Yabbicom v. King*, (1899) 1 Q. B. 444; 63 J. P. 149.

It may be noted that the Local Government Board in England (now Ministry of Health) does not favour bye-laws reserving discretionary power to dispense with their requirements. As regards building bye-laws it is said that a dispensing power should be reserved. See, however, S. 190, under which the power of dispensation is denied.

For further notes see various sections dealing with framing of bye-laws.

(4) “Committee” means a Municipal Committee established by or under this Act.

Notes.

S. 3, cl. (2) of the old Act.

Analogous Law.—Cf. S. 6 (18) of Bengal Act, III of 1884; S. 2 (2) of Burma Act, III of 1898; S. 3 (b) of Central Provinces Act, II of 1922.

“Municipal committee” or simply “committee” should be distinguished from “municipality.” The expressions are often used in the same sense in ordinary use and in the judgment of the courts the expression “municipality” is often used where committee or municipal committee is meant. Municipality is the area while the committee is the governing body exercising powers under the Act in the said area.

Analogous Law:

S. 6 (18), Bengal District Municipal Act, 1884.
S. 2 (2), Burma Municipal Act, III of 1898.

S. 3 (b) Central Provinces Municipal Act, II of 1922
S. 3 (xi) Rangoon City Municipal Act, 1922
S. 2 (1), U. P. Municipalities Act, 1916.

(4a) "Deputy Commissioner" or "Deputy Commissioner of the district" includes Additional Deputy Commissioner, Joint Deputy Commissioner or any person or persons at any time appointed by the Local Government to perform in any district or districts the functions of a Deputy Commissioner under this Act:

Provided that no official shall be so appointed unless he has for three years exercised the powers of a Magistrate of the first class:

Notes.

The definition of Deputy Commissioner was first introduced by Amendment Act XV of 1926. The present definition is the result of further amendment introduced by Act III of 1933.

This clause has been enacted to enable the local Government to confer the powers of a deputy commissioner on any other officer or officers for the purposes of the Act. In the new colonies it has been found desirable that such powers should be exercised by the colonization officers.

(4b) "Commissioner" or "Commissioner of the division" includes Additional Commissioner, Joint Commissioner or any person or persons at any time appointed by the Local Government to perform in any division or divisions the functions of a Commissioner under this Act:

Provided that no official shall be so appointed unless he has for five years exercised the powers of a Magistrate of the first class:

Notes.

This definition has been introduced by Amendment Act, III of 1933. The definition extends the ordinary meaning of the term and will enable Government to confer the powers of Commissioners on other officials for purposes of the Act.

Analogous law—*Cf.* S. 3 (3) of Bombay Municipal Boroughs Act 1925, and 3 (3) of Bombay District Municipal Act, III of 1901.

(5) "erect or re-erect any building" includes —

- (a) any material alteration or enlargement of any building,**
- (b) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation,**

- (c) the conversion into more than one place for human habitation of a building originally constructed as one such place,
- (d) the conversion of two or more places of human habitation into a greater number of such places,
- (e) such alterations of a building as affect an alteration of its drainage or sanitary arrangements, or materially affect its security,
- (f) the addition of any rooms, buildings, out-houses or other structures to any building, and
- (g) the construction in a wall adjoining any street or land not belonging to the owner of the wall, of a door opening on to such street or land:

Notes.

This definition reproduces with some changes S. 94 of the old Act. Cl. (g) is new.

Analogous Law:—

S. 240, Bengal District Municipal Act, 1884.

S. 326, Bengal Municipal Act, XV of 1932.

S. 186 (3), Behar and Orissa Municipal Act, 1922.

S. 123 (Expl.), Bombay Municipal Boroughs Act, 1925.

S. 96. (Expl.) Bombay District Municipal Act, III of 1901.

S. 337 (2), Bombay City Municipal Act, III of 1888.

S. 2 (14), Burma Municipal Act, III of 1898.

S. 3 (46), Calcutta City Municipal Act, III of 1923.

S. 3 (d), Central Provinces Municipal Act, II of 1922.

S. 3 (22), Madras City Municipal Act, 1919.

S. 3 (24), Madras District Municipal Act, V of 1920.

S. 3 (xiv), Rangoon City Municipal Act, 1922.

S. 178 (3), United Provinces Municipalities Act, 1916.

English Law:—

S. 159, Public Health Act, 1875.

Includes.—The use of the word “include” shows that the phrase has to be taken in its ordinary significance. The ordinary meanings have been extended, for the purposes of the Act, by inclusion of certain things which would not ordinarily be understood to fall within the meaning of the phrase. With regard to a similar use of the word in an analogous provision of the Bombay Act, III of 1901, it was laid down that the rule with regard to the effect of interpretation of clauses of a comprehensive nature such as those defining a term as “including” something, is that they are not to be taken as strictly defining what the meaning of a word must be under all circumstances but merely as declaring what things may be comprehended within the term where the circumstances require they should. 13 Bom. L. R. 494; 11 I. C. 610

Similarly in 30 Bom. 558 it was held that "include" is a phrase of extension and not of restrictive definition. It is not equivalent to "means." But as said by Lord Watson, "'Include' is very generally used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the statute, and when it is so used, these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also things which the interpretation clause declares that they shall include."

"An interpretation clause of this kind is not meant to prevent the word receiving its ordinary, popular and natural sense whenever that would be properly applicable, but to enable the word as used in the Act when there is nothing in the context or the subject matter to the contrary, to be applied to some things to which it would not ordinarily be applicable."

"When it is mentioned that a particular definition 'includes' certain things, it should be taken that the legislature either intended to settle a difference of opinion on the point or wanted to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question." 1932 Mad. 474; 158 I. C. 12.

Mere temporary structures not within the section.—The mere enclosing of a space by canvas screens cannot be considered as erecting a building. The words necessarily convey an idea of permanence with utility. 28 All. 199; 2 A. L. J. 676. Cf. Rat. Un. C. C. 115 (1880) and Rat. Un. C. C. 428 (1888).

Additions.—The erection of a *katta* which serves as a broad extended doorstep or raised platform in communication with the road, has been held to be an addition to the existing building within the meaning of a corresponding section of Bombay Act, VI of 1873. Rat. Un. C. C. 483 (1889). See 1933 All. 657 noted on p. 21 *supra*.

Construction of walls.—By the combined effect of this definition and the definition of the word "building" reconstruction of walls will amount to re-erection of a building. 8 I. C. 1050; 12 Bom. L. R. 1060. This case was subsequently distinguished in 13 Bom. L. R. 494. There the accused reconstructed the south wall of his house on the old foundations. It was contended by the municipality that the reconstruction of the wall amounted to the reconstruction of the building and that the accused could not reconstruct the wall without the sanction of the municipal committee. It was held that the

reconstruction of a small wall upon its own foundation is not necessarily and as a matter of law "the erection of a building" within S. 96 of the District Municipal Act. Mr. Justice-Heaton: observed "When we have a complex structure such as a house, the 'building,' as contemplated by S. 96 is a whole house and a single wall of the house is not by itself a building but only a part of the building...." It is a question of fact whether the reconstruction of any particular wall or portions of a building is substantially a reconstruction of the building. Justice Chandarvarkar was of different opinion and he held that "a side wall of a house expressly falls under the Act within the definition of a building, its reconstruction amounts to erecting a building of which due notice must be given as required by the Act." 13 Bom. L. R. 494; 11 I. C. 610. See also 19 Bom. 27.

Building of a new wall on the site of an old wall including the old foundations was not an addition to the existing building within S. 33 of the District Municipal Act (Bombay Act, VI of 1873) corresponding to S. 189 of the Punjab Act. 18 Bom. 547; (1888) Rat. Un. C. C. 402. S. 33 required permission only in case of additions to an existing building.

The definition of "building" includes a wall and therefore so far as the Punjab is concerned the question whether a wall is a building has been set at rest by the legislature though under other provincial municipal Acts "wall" has been held to be a "building."

To raise a wall above the prescribed height would amount to erection of a building. An alteration in a building must include a part of such building. The definition of the expression is not inconsistent with a wall supplementary to or accessory to a verandah, balcony or house or other larger building being in itself a building within the meaning of S. 3(5). Cf. 21 A. L. J. 74; 1924 All. 200; 21 A. L. J. 825.

Rebuilding a wall from its foundation is equivalent to re-erection of a building and committee's permission is necessary. The mere fact that an exact replica of the old wall was built cannot prevent the new wall from being a building within the meaning of the Act. 76 I. C. 478; 1923 Bom. 407.

What is re-construction.—There were wooden pillars facing a street: on them there was a continuous gallery or balcony which formed part of a room without any wall dividing the gallery from the room and with a common roof over the two. The owner of the house removed the old,

wooden pillars and replaced them by pillars of masonry. He also removed the old galleries and replaced them by new galleries forming part of the room next to them and without any dividing wall. The galleries were within alignment area.

Held, that the whole portion within the alignment area was demolished and reconstructed. 1930 S. 20.

Erection of a building.—Any material alteration or reconstruction of any wall on old foundations amounts to a construction of a building. 1928 Bom. 389; 112 I. C. 561.

Clause (a).—Where in sanctioning the rebuilding of a house the committee required a space between the external wall of the house and the municipal drain to be left open, the erection of a platform on this open space was held to be an "erection" under S. 240 of the Bengal Act, III of 1884, which corresponds to S. 3 (5) (a) of the Punjab Act. 37 I. C. 854.

The building of a new and additional masonry wall which materially enlarges a courtyard constitutes an "erection of a house" and requires sanction. 26 I. C. 651.

The mere addition of masonry edging to a *katcha chabutra* attached to a house is not a material alteration of it. 23 I. C. 192; 12 A. L. J. 227.

There were eight gaps between eight supports of a roof. These gaps were filled in with frames of wood and glass. Some of these frames were doors and some windows; these additions were held to be material alterations of the building within the meaning of S. 3 (5) (a). 58 P. L. R. 1915; 28 I. C. 341.

Material alteration or enlargement of any building means erection of anything on a site attached or detached from any buildings standing on it so as to alter the structure of the house with all the buildings on that site. Therefore the erection of a boundary wall apart from its erection as part of the scheme of erection or re-erection of a house is not a material alteration or enlargement of building within S. 240 of the Bengal Act, III of 1884. 63 I. C. 290. (In this Act the building does not include a wall.)

Material alteration affecting security of building.—The replacing of an old by a new superstructure upon an old *chatta* or bridge over a lane is a material alteration within the meaning of cl. (a) of S. 94 of the old Act and affects the security of the old building within the meaning of cl. (e) of the same section.

It is not for the owner but for the committee in such a case to judge how the change "affects the security." Even a change which increases the security certainly affects it and

must consequently be approved by the committee. 15 I. C. 658.

Other material alterations.—The accused dismantled an old balcony and in its place erected a covered balcony without obtaining the sanction of the municipal authority:

Held, that the erection certainly amounted to an alteration of a building but not to a material alteration or enlargement as would require the sanction of the municipality. 14 I. C. 602.

Addition of a new partition wall over a *thara* by which the way to a public well was diverted, was held to be a material alteration within the meaning of this definition. P. R. 13 of 1907 Cr.

Material alteration of the structure of any house occurring in S. 326 of Act II of 1888, contemplates the erection of anything on a site attached to or detached from any building standing on it so as to alter the structure of the house, *i.e.*, of the house with all the buildings standing on that site. 7 C. W. N. 274.

Conversion of buildings.—The cls. (b), (c) and (d) imply some change in the building itself and do not cover a case where the building remains absolutely unchanged and the only thing changed is the use to which the building is put. In this case the accused built a house principal room of which was described as a shop; he however used the whole of it as a dwelling house. 23 I. C. 517; 17 Bom. L. R. 212.

Reconstruction and repairs.—Under a somewhat corresponding section of the City of Bombay Municipal Act it was pointed out that in one sense every reconstruction of a portion of a building must be either an addition or alteration or repair. The word "reconstruction" must be taken to denote certain other elements than addition, alteration or repair. Though in one sense all reconstructions may be "repairs" there are different degrees of repairs. Where repairs are made to a house which do not touch its stability, they constitute repairs pure and simple; but if they are of a substantial character, intended to add to the stability of the building they amount to "reconstruction." So if the repair is of an ordinary and casual character, it is not reconstruction of any portion of the building. If, on the other hand, the repairs are of a more or less substantial character, affecting the stability of the building, they constitute reconstruction of the building whether the repairs are done inside or outside the building. In each case it is a question of fact whether the partial works done with reference to a building

are mere repairs or are a reconstruction of a portion of the building. Hence the difference between "repairs" and "reconstruction" is one of degree and can be made out by finding whether what has been done adds to and was intended to add to the structural capacity of the building. 6 Bom. L. R. 1028.

In a case it appeared that old wooden pillars with the balcony that stood on the pillars had been burnt down and the roof of the front portion of the house had fallen down; it was contended that the construction of the pillars and balcony amounted to repairs only. *Held*, overruling the contention that the construction of the portions of the house which had been destroyed by fire is a "re-erection" and does not amount to repairs. 38 I. C. 305.

Erect or re-erect a building does not mean the reconstruction of an entire building from its foundation; the question whether there has been a re-erection depends upon the circumstances of each case. Where a man intended to repair the upper storey or the roof of the house and in the course of making the repairs he found it necessary to renew some of the walls or parts of the walls of the upper storey and also to renew some of the wood works of the balcony, in order to do that he had to pull down and put up again the whole balcony. No new structure had been erected. It was *held* that on the findings the repairs will not amount to erection or re-erection of the building. 41 I. C. 713, 39 Cal. 429. (This will not be the correct view according to Punjab Act)

Where a person effects some crude repairs to the existing walls he cannot be said to have erected a building within S. 3 (5) and no offence within S. 219 is committed. 1933 Lah. 85.

Opening of doors.—Opening a new external door is an external alteration of a building. 9 Bom. 568.

Adjoining.—If there is a wall separating a house from the public road, the building cannot be called adjoining the road. Adjoining must mean contact at some point. *Cf.* 1928 All. 696; 112 I. C. 588.

5. (a) "Executive Officer" means an Executive Officer appointed under the provisions of the Punjab Municipal (Executive Officer) Act, 1931.

Notes.

This clause should be deemed to be inserted for municipalities to which the Executive Officer Act is extended.

r of 1884.
r of 1899.

- (6) "explosive" and "petroleum" have the meanings assigned to those words in the Indian Explosives Act, 1884, and the Indian Petroleum Act, 1899, respectively:

Notes:

Indian Explosives Act, 1884, defines "explosive" as follows:—

"Explosive" —

- (a) means gunpowder, nitroglycerine, dynamite, gun-cotton, blasting powder, fulminate of mercury or of other metals, coloured fires and every other substance whether similar to those above mentioned or not, used or manufactured with a view to produce a practical effect by explosion or a pyrotechnic effect; and
- (b) includes fog-signals, fireworks, fuzes, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions, and every adaptation or preparation of an explosive as above defined.

Indian Petroleum Act, 1899, defines the word "petroleum" as follows:

"Petroleum" includes also —

- (i) the liquids commonly known by the names of rock oil, Rangoon oil, Burma oil, paraffin oil, mineral oil, kerosine, petroline, gasoline, benzoline, benzine and benzol;
- (ii) any inflammable liquid which is made from petroleum, coal, schist, shale, peat or any other bituminous substance or from any product of petroleum; and
- (iii) any liquid or viscous mixture having in its composition any of the liquids aforesaid; but it does not include any oil ordinarily used for lubricating purposes and having its flashing point at or above two hundred degrees of Fahrenheit's thermometer.

Analogous definition—Cf. S 3 (e) of Central Provinces Municipal Act, II of 1922; S. 2 (15) of United Provinces Municipalities Act, 1916.

- (7) "infectious disease" means cholera, plague, small-pox, tuberculosis or such other dangerous disease as the local Government may notify in this behalf:

Notes:

This definition is important in connection with Ss. 141 to 146. There was no corresponding definition in the old Act,

The word "tuberculosis" has been added by Amendment Act, II of 1923.

Analogous Law:—

S. 3 (11), Bengal Municipal Act, 1932.

S. 3 (5), Bombay Municipal Boroughs Act, 1925.

S. 3 (16), Bombay District Municipal Act, III of 1901.

S. 3 (a), Bombay City Municipal Act, III of 1888.

S. 3 (21), Calcutta City Municipal Act, III of 1923.

S. 2 (xvii), Cantonment Act, II of 1924.

S. 3 (f), Central Provinces Municipal Act, II of 1922.

S. 3 (10), Madras City Municipal Act, 1919.

S. 287, Madras District Municipal Act, V of 1920.

S. 3 (xii), Rangoon City Municipal Act 1922.

English Law:—

S. 6, Infectious Disease Notification Act, 1889.

Such other dangerous diseases, etc.—The local Government has by Notification No. 224, dated 18th April 1914, declared the following as also infectious diseases:—measles, chickenpox, diphtheria, tubercle of lungs, scarlet fever, typhus fever, enteric fever, erysipelas.

Tuberculosis.—This will include tubercle in all its forms; tubercle of lungs was declared to be an infectious disease under the above notification.

Government Notification No. 218, dated 24th March 1915, excludes certain municipalities from the operation of the above notification under S. 9 of the Act.

- (8) "inhabitant" includes any person ordinarily residing or carrying on business, or owning or occupying immoveable property, in any municipality or in any local area which the local Government has by notification under this Act proposed to declare to be a municipality; and in case of any dispute, means any person or persons declared by the Commissioner to be an inhabitant or inhabitants:

Notes.

S. 3, cl. (3) and S. 206 of the old Act have been combined in the present definition.

Analogous Law.—S. 2 (4), Burma Act, III of 1868; S. 3 (g), Central Provinces Act, II of 1922; S. 2 (8), United Provinces Act, II of 1916; S. 3 (25), of Bengal Municipal Act, 1932; S. 2 (XVIII) Cantonment Act, 1924.

Includes.—See notes under S. 3 (5).

Residing.—The term must here be understood in its legal and not in its ordinary acceptation. Residence, dwelling, domicile, home are all synonymous terms, and are discussed

at great length in 7 W. R. C. R. 349. Occasional or temporary residence will not do.

Carries on business.—For a person to be said “to carry on business” at a place it is not necessary that he should have an office or a regular place of business there. Nor is it necessary that the business should be conducted by him personally. 4 Mad. 209. See also 18 Bom. 294 ; 8 Cal. 678 ; 13 Cal. 256.

For further notes *see* any commentary on C. P. C., S. 20. For English cases on residence and business qualification *see* Rogers on “Elections,” Vol. I, 18th Edition, pp. 13-20.

- (9) “municipality” means any local area declared by or under this Act to be a municipality :

Notes.

S. 3 (1) of the old Act.

Analogous Law—S. 6 (g) of Bengal Act, III of 1884 ; S. 3 (34) of Bengal Municipal Act, 1932 ; Ss. 3 (1) and (5) of Bombay Act, III of 1901 ; S. 3 (9), Bombay Municipal Boroughs Act, 1925.

- (10) “occupier” includes an owner in actual occupation of his own land or building, and also any person for the time being paying or liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which the word is used ; for the purposes of Chapters V and IX occupier shall include hotel-keeper, lodging house-keeper, and any owner whose premises are let to more than one tenant :

Notes.

The old Act contained no corresponding interpretation clause. The present definition is extensive and not restrictive. See notes on “include” above under S. 3 (5).

The words “section 61 (b) (h) and ” have been omitted by Act II of 1923.

The definition is important so far as taxation or rating under Chapter V is concerned. Under the Punjab Municipal Act the only tax specifically payable by the occupiers is one mentioned in S. 61 (1) sub-clause (e). The definition is also important for the exercise of powers under Chapter IX of the Act. It will be seen that for carrying out certain requirements in the interest of public health and safety the occupiers

are bound to comply with certain requisitions of the municipal committee.

Analogous Law :—

S. 285, Bengal Municipal Act, 1884.	S. 2 (xxiii) Cantonment Act, II of 1924.
S. 3 (36), Bengal Municipal Act, XV of 1932	S. 3 (j), Central Provinces Municipal Act, II of 1922.
S. 3 (15), Behar and Orissa Municipal Act, 1922.	S. 3 (15), Madras City Municipal Act, 1919.
S. 3 (48), Calcutta City Municipal Act, III of 1923.	S. 2 (11), United Provinces Municipalities Act, 1916.

Occupation.—The meaning of “ occupation ” with regard to the subject of taxation was discussed in *R. v. St. Pancras Assessment Committee*, L. R. 2 Q. B. D. 581, and was explained thus : “ Occupation includes possession as its primary element, but it also includes something more. Legal possession does not of itself constitute occupation. The owner of a vacant house is in possession and may maintain trespass against any one who invades it, but as long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it and keeps it ready for habitation whenever he pleases to go to it, he is an occupier though he may not reside in it one day in a year. On the other hand, a person who, without having any title takes actual possession of a house or piece of land, whether by leave of the owner or against his will, is the occupier of it. Another element besides actual possession is necessary to constitute the kind of occupation which the Act contemplates and that is permanence. A transient temporary holding of land is not enough to make the holding rateable. It must be an occupation which has in it the character of permanence, a holding as a settler not as a way-farer.” Besides the above, in *Cary v. Bristow*, (1895) L. R. 2 A. C. 262, a third ingredient has been held to be necessary. This is exclusiveness. The right of the occupier must be unattended by a simultaneous right of any other person in respect to the same subject-matter. Exclusive occupation as was explained in *Holywell Union v. Halken Drainage Co.*, (1895) A. C. 117, does not mean that nobody else has any right in the premises. If a person has only a subordinate occupation subject at all times to the control and regulation of another, then that person has not occupation in the strict sense, but the rateable occupation remains in that other who has the right of regulation and control. On the subject of rateable occupation see “ *Ency. of Local Government*, ” Vol. V, p. 323.

Persons living with a particular individual occupying a holding by a reason of some connection with or relation to him such as sons or servants would not be occupiers. 26 C. W. N. 689.

When a naib of a zamindar resided in a holding solely to carry on the business of the zamindar whose representative he was and who paid the rent to the superior landlord: *Held*, that the zamindar and not the naib must be regarded as the occupier. 15 C. L. J. 689.

In cases where occupiers are liable for rates on buildings the bare ownership of the holding does not constitute rateable occupation, or, in other words, every owner is not an occupier just as every occupier is not an owner. In order to constitute rateable occupation there must be a use and enjoyment which is or is capable of being beneficial. 60 I. C. 498, 1921 Cal. 161.

Position of hotel-keepers.—According to the definition of occupation as understood in English law, lodgers, and inmates and licensees in hotels and lodging houses are in the position of subordinate occupation. The Act probably following the above principle makes keepers of hotels, lodging houses, etc., liable as occupiers.

In most cases the actual occupier or a tenant who converts the premises to the uses for which licenses are required to be taken out is the person liable for using the premises without license: 4 Bom. L. R. 940. Where the owner of a certain premises engages a servant to manage it on his behalf and subject to his control: the owner and not the manager is the occupier: (1915) 3 K. B. 1. A person who is merely responsible for the upkeep and cleanliness of a temple cannot be said to be an occupier of the temple. 39 All. 309.

- (11) "owner" includes the person for the time being receiving the rent of land and buildings, or either of them, whether on his own account or as agent or trustee for any person or society or for any religious or charitable purpose, or who would so receive the same if the land or building were let to a tenant :

Analogous Law :—

S. 6 (11), Bengal District Municipal Act, 1884.

S. 3 (38), Bengal District Municipal Act, XV of 1932.

S 2 (*xxiv*), Cantonment Act, II of 1924.

S 3 (*k*), Central Provinces Municipal Act, II of 1922.

S. 3 (17), Madras City Municipal Act, 1919.

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| S. 3 (18), Behar and Orissa Municipal Act, 1922 | S. 3 (50), Calcutta City Municipal Act, III of 1923 |
| S. 3 (14), Bombay Municipal Boroughs Act, 1925. | S. 3 (17), Madras District Municipal Act, V of 1920. |
| S. 3 (8), Bombay District Municipal Act, III of 1901 | S. 3 (xxi), Rangoon City Municipal Act, 1922. |
| S. 3 (m), Bombay City Municipal Act, III of 1888. | S. 2 (13), U. P. Municipalities Act, 1916. |
| S. 2 (8), Burma Municipal Act, III of 1898. | |

English Law:—

S 4, Public Health Act, 1875.

Notes.

S. 3 (5) of the old Act.

Include.—The use of word “include” shows that the definition is not restrictive. Where a son contributed funds and helped his father in acquiring and improving a house and lived in it in the absence of his father he was treated as “owner.” 38 Cal. 501; 10 I. C. 43.

Shebait.—Where certain shebait of a deity worship it and manage the *debutter* property in turns one of them who is out of his turn and therefore not in possession of the *debutter* property and who has therefore no control over the management of the same is not an owner. 41 Cal. 104; 21 I. C. 169.

Agents and mortgagees, etc.—The following have been held to be owners under the corresponding definition of owner in Public Health Act, 1875:—A rent collector; *St. Helens Corp. v. Kirkham*, (1885) 16 Q. B. D. 403, a second mortgagee who entered into possession of the premises and collected rents which he applied in paying outgoings and interest on first mortgage; *Tottenham L. B. v. Williamson*, 57 J. P. 614, and trustees in receipt of rents; *Harrison v. Barney*, (1894) 3 Ch. 562; a mortgagor not in possession was not owner. *Maguire v. Leigh on Sea* (1906) 70 J. P. 479. Trustees in receipt of rents are owners though not beneficially interested: *In re Barney Harrison v. Barney*, (1894) 3 Ch. 562. A rent contractor is an owner and is bound to comply with notice under S. 125. Cf. 1928 B. 527.

Lessees and Sub-lessees. It is sometimes difficult to determine who is the owner of premises which are sublet by a tenant. A was lessee for 21 years at a rackrent of a house and shop; he occupied the shop himself and sublet the upper part of the house to B as a yearly tenant. The upper part was shut off from the shop and A had no access to it. A privy in the upper part of the house caused nuisance and

the local authority proceeded against C who received rent from A as agent of A's landlord:

Held, C was not the owner, but A was the owner of the upper part where the nuisance existed. *Cook v. Montagu*, (1872) L. R. 7 Q. B. 418; 37 J. P. 53.

It will appear from cases cited below that where there are intermediate lessees and the rent received by each is the same, the person ultimately receiving the rent is the owner but the lessee receiving more rent than he pays is the owner. *Bowen v. James*, (1882) 10 L. R. (Ir.) 26; *Walford v. Hackney Bd. of Works*, (1894) 43 W. R. 110; *Truman, etc. v. Kerslake*, (1894) 2 Q. B. 774.

Lessor of vacant sites.—The mere owner of land who has let it out under a building scheme for building purposes, is not the owner of the property within the meaning of S. 171 of the Act. *Cf.* 71 C. 935; 12 Bom. L. R. 669. Similarly a *fuzendar* is not the owner within the meaning of S. 125. *Cf.* 20 B. 617.

Receiver.—A receiver appointed by court is not the owner of the premises he holds as receiver within the definition of the term "owner." If he receives rent for such premises he does not do so on his own account or as agent and trustee for any person but as an officer of court and as manager of the property on its behalf. 30 Cal. 711; 7 C. W. N. 766; *fol.* in 11 I. C. 129; 38 Cal. 714. The owner continues to be liable and notices should be served upon him. The owner should move the receiver to comply with the notice after taking directions from the Court. 38 Cal. 714.

Permission of court is necessary to make the receiver a party in any proceedings against him. 1929 Cal. 514.

As already observed above the rent collector is the "owner." It is not necessary that the receiver of rent should be the rightful receiver of it. It is sufficient if the person *de facto* receives the rent whether he receives it rightfully or wrongfully and whether in his own right or in the right of another. *Peck v. Waterloo & Seaforth L. B.* (1863) 33 L. J. M. C. 11.

Rent Farmer.—A person who is a "rent farmer" in respect of certain property is deemed to be the owner thereof within the meaning of S. 231* of Bombay City Municipal Act. 1930 B. 165.

Owner of soil of public street.—Such an owner is not an owner so as to be liable to be called upon to abate a nuisance in a public street, as the property is not capable of being let out.

*Corresponds to Ss. 125 and 126 of the Punjab M. Act.

Owner.— The word includes part owner. The definition is not restrictive. Cf. 1926 Cal. 261; 85 I. C. 533. In view of the provisions of S. 115, this construction is not justified under the Punjab Act.

- (12) "rules" and "rule" mean, respectively, the rules made or to be made and notified by the local Government under the authority of this Act, and any one of such rules.

Notes.

S. 3, sub-clause (9) of old Act. The local Government is authorized to make rules under Ss. 9, 52 (2), 95, 218 and 240.

Analogous Law. S. 3 (24), Behar and Orissa Municipal Act, 1922; S. 6 (13), Bengal District Municipal Act, 1884.

- (13) (a) "street" shall mean any road, footway, square, court, alley or passage, accessible whether permanently or temporarily, to the public, whether a thoroughfare or not;

and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid;

and shall include also the drains and gutters therein or on either side and the land, whether covered or not by any pavement, verandah, or other erection, up to the boundary of any abutting property not accessible to the public;

- (b) "public street" shall mean any street—

- (i) heretofore levelled, paved, metalled, channelled, sewered or repaired out of municipal or other public funds, unless before such work was carried out there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor; or

- (ii) which, under the provisions of Section 171, is declared by the committee to be, or under any other provision of this Act becomes, a public street :

Analogous Law:—

S. 6 (13), Bengal District Municipal Act, 1884.
 S. 3 (43), Bengal Municipal Act, XV of 1932.
 S. 3 (24), Behar and Orissa Municipal Act, 1922.
 Ss. 3 (16) and (19), Bombay Municipal Boroughs Act, 1925.
 Ss. 3 (12) and 3 (13) Bombay District Municipal Act, III of 1901.
 S. 3 (w) and (x), Bombay City Municipal Act, III of 1888.
 S. 2 (12), Burma Municipal Act, III of 1898.

S. 33 (57) and (67), Calcutta City Municipal Act, III of 1923.
 S. 2 (xxvii), Cantonment Act, II of 1924.
 S. 3 (m), Central Provinces Municipal Act, II of 1922.
 S. 3 (19), Madras City Municipal Act, 1919.
 Ss. 3 (20) and (21), Madras District Municipal Act, V of 1920.
 S. 3 (xxv) and (xli) Rangoon City Municipal Act, 1922.
 S. 2(23) and 2 (19) United Provinces Municipalities Act, 1916.
English Law:—
 S. 4, Public Health Act, 1875.

Notes.

S. 3 (4) of the old Act.

The definition of "street" has been entirely recast and a distinction has been made between "street" and "public street." The old Act did not define "public street." The definition of street in the present Act follows the definition of the word in Bombay and Madras Municipal Acts. The definition has again been amended by Amendment Act 1933. The word "street" occurs in the following sections of the Act:—
 3 (5) (a) 58 Expl., 63 (a), 94 (b), 109, 110, 112, 118, 125 (3), 129, 132, 140, 151, 156, 157, 170, 170-A., 170-C., 170-D., 170-E., 170-F., 171, 172, 173 (d) 174, 174-A., 175, 179, 182 (i), 183, 188 (p), 190 (e), and 192 (b). The words "public street" are used in Ss. 3 (14), 52, 56, 169, 171, 173, 182 (2) and 188 (o).

Recent changes.—Before the definition was amended by Act III of 1933, the last para. of S. 3 (13) (a) stood as follows:

and shall include also the drains on either side and the land, whether covered or not by any pavement, verandah, or other erection, which lies on either side of the roadway up to the boundaries of the adjacent property, whether that property be private property or property reserved by Government for any purpose other than a street:

The alteration does not affect any change but improves the definition. Cl. (b) of S. 3 (13) read as follows:—

(b) "public street" shall mean any street—

(i) over which the public have a right of way, or

(ii) heretofore levelled, paved, metalled, channelled, sewered or repaired out of municipal or other public funds; or

... (ii) which, under the provisions of section 171, is declared by the municipality to be, or under any other provisions of this Act becomes, a public street:

Sub-clause (1) has been deleted. Streets which are public by mere user will not be public under the Act though it is conceivable that there may be streets which have never been paved, etc., or repaired out of municipal funds or public funds but which the public may have a right to use them.

The main distinction between the two is that only public streets vest in the committees and the municipal fund can only be spent on the improvement, repairs or cleansing of such streets. By reading the sections quoted above it will, however, be observed that the municipal control of matters of sanitation and obstructions, etc., over mere streets is very extensive. In fact so far as municipal interference for public purposes is concerned the Act does not make any distinction between streets and public streets. As observed in 43 Cal. 130, 33 I. C. 271 the difference between the public streets vested in the committee and streets over which the municipality has only a power of control is that in the former case the municipality is the body responsible for lighting, watering, sewerage and cleansing, while in the latter case they have only the power to prevent the street from becoming a nuisance or the rights of the public from being interfered with.

What is a street.—The various municipal Acts in force in India give different interpretations of the term "street." The term will have, therefore, to be construed according to the interpretation given in each Act. Where the interpretation clause is wanting no satisfactory and generally accepted definition has been laid down by courts. In its ordinary and popular sense it means a roadway not necessarily a highway which has on one side or both sides a more or less continuous or regular row of houses. Etymologically it means a paved way. In legal terminology it means a highway in an incorporated municipality.

Streets and highways.—It is presumed that street (over which the public have a right of way) means the same as highway in England, i.e., a way which is open to all the King's subjects. "It is essential to the notion of a highway that it should be open to all members of the public. The definition at once excludes land over which a man may pass by virtue only of a license personal to himself or in the exercise of his right as the owner or occupier of that land or as the owner or occupier of other land to which an easement over that land is appurtenant. It excludes roads commonly called occupation roads, laid out for the accommodation of

the occupiers of adjoining properties, and legally open to them only. It excludes also lands such as village greens, parks or fields, over which the inhabitants of a particular district have by custom or otherwise a right of recreation. In this case as in the case of common land, although other members of the public may habitually make use of the land without hindrance, they do so under cover of a right which, in strict law, is confined to a limited class." Pratt on "Highways."

Coke's classification of highways.—There are three kinds of ways. The first is a footway appropriate to the sole use of pedestrians. The second is a footway and horseway called *pack* and *primeway*, because it is both a footway which is the first or primeway, and a pack or drift way also. The third is a cartway including the other two.

Classification of rights of way and other rights.—In a Calcutta case Wilson, J., observed that by common law of England there are three distinct classes of rights of way and other similar rights. First, there are private rights in the strict sense of the term vested in particular individuals or the owners of particular tenements, and such rights commonly have their origin in grant or prescription. Secondly, there are rights belonging to certain classes of persons, certain portions of the public such as the freemen of a city, the tenants of a manor, or the inhabitants of a parish or village—such rights commonly have their origin in custom. Thirdly, there are public rights in the full sense of the term which exist for the benefit of all the Queen's subjects; and the source of these is ordinarily dedication.

It is unnecessary to enquire whether the mode of acquiring each of these classes of rights is necessarily the same in all cases in England and in India. But it is, I think, important to remember that these three classes of rights exist in the one country as well as in the other, etc., etc. 15 Cal. 460 at p. 464 and 57 Cal. 526.

A public right of way in the full sense of the term and as to all King's subjects is unconnected with dominant tenements. Such rights of way may be acquired by user or dedication to the public in general. In this connection the fact that there were no thoroughfares at the termini is not of much importance on the point of dedication, but the question whether public in general use the way as pathway or only the inhabitants of the village or some other village do, are questions of considerable materiality. For where the privilege to use a road is enjoyed by a particular section of the public community or by inhabitants of two or three villages and not by others the road is not a public road.

Ways permitted to be used by a section of the public or ways used by all in particular cases are private ways which have their origin in custom and such customary ways can be converted into an ordinary highway after user by the general public, sufficient to raise the presumption of dedication, but the evidence in support of the public claim must be cogent.

A pathway, which lies over a private land and which is used by the villagers and perhaps by the inhabitants of some of the villages, but with regard to which there is no testimony of universal user sufficient to raise a presumption of dedication to the public, is not a public way within the meaning of S. 283, I. P. C. To establish a customary right of way to the same pathway the court must be satisfied of the reasonableness and certainty of the user and that such user was not permissive nor exercised by stealth or force and that the right has been exercised for such length of time as to suggest that by agreement or otherwise the usage has become the customary law of the particular locality. 57 Cal. 526; 1930 Cal. 286.

Public ways are not easements.—The right of the public to pass over a public road is not in the nature of an easement properly so called nor is it acquired by prescription under S. 26 of the Limitation Act. 62 P. R. 1898. and 20 A. 200.

The right of the public to the enjoyment of land set apart from time immemorial for use of the public way stands upon a higher footing than a mere easement over property belonging to another. 1925 Mad. 415; 47 M. L. J. 784; 85 I. C. 345.

The right of passage that the public have over a road is not an easement as it does not depend on the ownership of any landed property. 1926 All. 538; 48 A. 560.

Nature of the rights of the public.—(1) The right of the public is a right of *passing along*, not a right of *being in* a highway: (Pratt on "Highways," p. 2.) The right which any of the King's subjects has at common law is merely to use the highway to pass along it: *Dovaston v. Payne*, (1795) 2 H. Bl. 527. The public have no right to be on the street to witness races or for holding meetings or for using it as a place of worship. In modern times the tendency is to enlarge this use.—"Highways are no doubt dedicated *prima facie* for the purpose of passage; but things are done upon them by every body which are recognised as being rightly done and as constituting a reasonable and usual mode of using a highway as such." See *Harrison v. Rutland (Duke)*, (1893) 1 Q. B. 142 at p. 146. Similarly persons of all sects and creeds are entitled to carry processions along public streets. 32 Mad. 478; 29 I. C. 248.

Processions.—Religious processions are lawful and legal and come within a proper user of the public highway and are always subject to the control of the district magistrate and police officers. But primarily the purpose for which a highway is dedicated is that of passage. Any extensions thereof must be such as are not inconsistent with the maintenance of the paramount idea that the right of the public is that of passage. Hence a religious procession is not entitled, by frequent stops in a public street for the purpose of performing some religious rites, to block the passage in an unreasonable manner. 43 A. 692; 1921 All. 146.

Right of access.—An owner of lands adjoining a highway is entitled to access to the highway at all points where his land adjoins the highway whether or no the soil of the highway be his. *Ramus v. Southhand* L. B. 67 L. J. 169; *Cable v. Saxby*, (1914) 3 K. B. 822. This right of the abutter to have access on a public pathway was held not to be a private right but to be a right held in common with the public. This does not give a private right for the infringement unless special damage is proved. 36 A. 11.

The right of access to the highway extends along the whole line of the boundary between the highway and the adjoining land. The owner of the adjoining land may prevent the erection of any building or other obstruction which bar his access to the highway. Thus, where the plaintiff's land came down to the very edge of a public promenade, and the local board erected a fence whereby he was deprived of direct access to the esplanade, *Romer, J.*, decided that the plaintiff was entitled to a mandatory injunction to compel the defendants to remove the fence, and to an inquiry as to the amount of special damage he had sustained (*c*). But the premises must actually adjoin the highway; and, if there is an intervening wall of strip of land, however narrow, belonging to another person, the owner of the premises had neither the rights nor the liabilities of a frontager (*d*). Cases have occurred in urban districts where an adjoining owner has imperilled his right of access to a highway by acquiescing in the erection of a large advertisement board on the side of his building; a legal easement may thus be acquired (*e*) (*Moody v. Steggles* (1879), 12 Ch. D. 61) whereby the owner may be effectually prevented from altering the entrance to his premises. Pratt on 'Highways,' p. 132.

Obstruction of access to public right of way.—Obstruction to private right of access to the public thoroughfare constitutes special damage: 3 Cal. 20. Every person is entitled to access to a public way from his premises and obstruction to such access gives a right to restrain such obstruction. 33 Cal. 1243.

See further notes under S. 172 under "Access to streets."

It would appear that so far as owners of buildings abutting on streets are concerned, the owners have not under the Punjab Municipal Act an indefeasible right to access over the street at every point. See sub-clause (g) of S. 3 (5).

Origin of street.—By the law of England public rights over a highway rest upon a dedication express or presumed from user by the public. In Smith's "Leading Cases," Vol. II, 12th edition, p. 166, the mode of creation of highways is thus stated: "Except where it is expressly created by statute, a highway derives its existence from a dedication to the public by the owner of land of a right of passage over it. This dedication, though it may not be made in express terms, as it indeed seldom is, may and generally will be presumed from an uninterrupted user by the public of the right of way claimed. An open user as of right by the public raises a presumptive inference of dedication, but that presumption may be rebutted, *e.g.*, by showing that, owing to the state of the title there was no valid dedication: *A. G. v. Esher and Co.*, (1901) 2 Ch. 647; *A. G. v. Watford*, (1912) 1 Ch. 417. No particular time is necessary for evidence of a dedication. If the act of dedication be unequivocal, it may take place at once. For instance, if a man builds a double row of houses opening into the ancient street at each end, making a street, and sells or lets the houses, that is *instantly* a highway"; per Chambre, J., in *Woodyer v. Hadden*, 5 Taunt 126; 14 R. R. 706

The above principles have been held to apply to India being founded in reason and common sense and conducive to public convenience. P. R. 62 of 1898.

Dedication.—Continued user of a way by the public raises a presumption that the way belongs to the public and that it has been dedicated by the owner for the public use for which it has been used. It does not lie upon the public to show by what particular owner the road has been dedicated. 32 Mad. 527; 6 M. L. T. 285.

In order to establish that a road is a public road, it is sufficient if acts of user by public are shown to have been acquiesced in by the owner of the land over which the road passes, and that these acts are of such a character as to warrant an inference that the owner intended to make over to the public the right to use the land as a public highway. 6 C. L. R. 282.

Dedication must be presumed from the user by the public of a thoroughfare as a highway, whoever was the owner of the soil at the time of dedication.

The rule of English Common Law that dedication of a highway arises by the fact of the private ownership of the soil does not apply to India.

Where a Hindu temple stood on such a highway there is no presumption that the dedication was made by the trustees of the temple any more than that the common owner of the site of the temple and of the road founded the temple and gave it the site and dedicated the highway to the public.

Where there has been a general user by the public a dedication without reservation would be presumed, if that was possible, and the burden of proving reservation will lie on the party contending for it. 8 I. C. 175.

Elements of good dedication.—An exclusive and continuous user by the public with the owner's knowledge and acquiescence for the prescriptive period will raise the presumption of a grant or dedication to the public.

When a dedication is implied only, the question may arise whether the dedication was of the entire ownership of land or merely of the right of user.

To constitute a valid dedication it is not essential that the legal title should pass from the owner.

It is not inconsistent with an effectual dedication that the owner should continue to make any and all uses of the land, which do not interfere with the uses, for which it is dedicated.

One of the essential elements of a good dedication is that it is made to the public, that it be irrevocable, and that the land be for ever dedicated for the designated public use. 33 Cal. 1290.

Land dedicated to cemeteries.—Land dedicated for cemeteries, if subsequently abandoned, will revert to the dedicator or his heirs. 33 Cal. 1290.

A public right of way can be acquired by user of or by dedication to the public in general. But in order to constitute a valid dedication to the public by the owner of the soil there must be an intention to dedicate, there must be an *animus dedicandi* of which the user by the public is evidence, and no more; a single act of interruption by the owner is of much more weight upon a question of intention than many acts of enjoyment. The onus of establishing such an intention lies heavily upon the person asserting the dedication. 56 I. C. 1; 1 Lah. 117.

Acceptance by public.—No formal act of adoption by any person or authority is required for the acceptance of a highway dedicated to the public use: such acceptance can be inferred from the public user of the way. 40 I. C. 74.

Streets which are not public.—The mere circumstance that a street is lighted and swept by the municipality is not of itself sufficient to convert a private into a public street. 25 Bom. 315.

A street protected by a gate closed at night by a watchman who lived over the gate and was under the control of and paid by owners of the houses in the street, was not held to be a public street as there had been no dedication of the land to the public and that the public had not acquired such a right of going over it as to make it a public street vested in the municipality. 20 Bom. 146. (This was a ruling under the old Bombay District Municipal Act containing no definition of the term "public street.")

An open courtyard was surrounded by six houses which including the court were once the property of a single person. It was not shown that it ever ceased to be so and the court was not used as a thoroughfare. The houses at the time of dispute were owned by different persons. Occupant of each house had the right of way across the court which was used as a means of access to the houses which surrounded it by persons having business with the house-holders: *Held* that such limited user by the public was not sufficient to show that the court had ceased to be private property and was converted into a "street" vesting in the municipality (*i. e.*, public street). 6 Bom. 686 (doubted in 30 Bom. 557).

Such a courtyard will certainly fall within the definition of "street" as defined in the Punjab Municipal Act.

Where there is a road, the privilege of using which is enjoyed by one particular section of the community it is absurd to say that the road is a public one. 25 W. R. 233.

Stopping up of rat-holes and putting stones right by the health department of the municipality is no proof of repair within the intent of the definition of public street. Nor would the use by the municipality of its powers to remove projections and obstructions be evidence that the street is public. 1895 Rat. Un. Cr. C. 802.

Where certain land is kept open for the purpose of allowing people generally to pass over it to visit a religious car preserved in a shed on the road, and the people pass over it by the implied permission of the shebaita to pay worship to the idol in the car, and for a certain time in each

year traffic is entirely stopped and the land is covered by temporary sheds erected by shop-keepers from whom the shebais collect tolls: *Held* the public have no right of way as of right over the open land which is not, therefore, a road as defined in the Bengal Act, III of 1884. 9 I. C. 562.

A blind alley having four houses each of which has a separate door, opening into a public street is itself a street, where it is not shown that the houses were at any time the property of one man and where the blind alley was not the property of any one and where others besides the residents of these houses have free access to it. It was *held* the alley was a "street" as defined in the municipal act. 13 I. C. 427; 44 P.R. 1912.

A plot of land left open in a market owned by a citizen and by its nature accessory to shop property and let by him as such to his shop tenants and neither drained, lighted nor cleaned by the municipality would not form a public street.

A municipality would be committing a trespass if it enters upon it or builds a road across it in spite of the objection of the owner and without taking any steps to acquire it. 56 I. C. 1; 1 Lah. 117.

In cases where the existence of a public highway is in issue, it is of crucial importance to distinguish between the grant to the public as such of a right of way and the permission which naturally flows from the use of the ground as a passage for visitors to or traders with tenants whose shops abut upon it. 56 I. C. 1; 1 Lah. 117.

A limited access by the public to a private place does not operate to convert it into a public street.

Where, therefore, a private *sarai* owned by three persons had two gates which were regularly shut at night but had fallen down for the last five or ten years, it was *held* that the municipal committee cannot prevent the owners from setting up the gates, as no right of way was acquired by the public. 109 P. R. 1916; 35 I. C. 355.

Streets held to be public.—Any land over which the public has a right to pass, is a public street and the mere fact that a special part of it was metalled for the greater convenience of traffic, would not make the unmetalled portion on each side any the less a public road or street. 37 All. 9; 26 I. C. 206.

"Cul-de-sac."—A lane which though at one time private property, had been for upwards of thirty years used by the public generally and had been lighted, drained and swept by

the municipalities was not the less a "street" as defined in United Provinces Municipalities Act, and was not the less a street because it happened to be a *cul-de-sac*. 30 All. 70.

Dedication of "cul-de-sac"—Before private land can become a public street or passage, it must be made so by statute or be dedicated specifically by the owner to the use of the public, or there must be circumstances from which such dedication can be presumed. Dedication may be inferred from user by the public but it is difficult, if not impossible, to establish a public right of way over a *cul-de-sac*, by evidence of user alone without proof that public money has been spent on it.

A public highway must *prima facie* lead from one public place to another. A *cul-de-sac* may be a public highway, but its dedication will not be presumed from mere public user without evidence of expenditure on the place in dispute for repairs, lighting or other matters by the public authority. 1931 Cal. 433; 58 Cal. 1124.

Certain lands acquired in 1874 for "a public purpose" under the Land Acquisition Act of 1870 in connection with the Port Commissioners Act of 1870, were conveyed to the Port Commissioners for value in 1876. A road constructed on a portion of these lands was used by the general public from the date of its completion in 1875 till 1881.

On the Port Commissioners erecting a fencing in 1903 obstructing access from adjoining premises to the road, a suit was instituted by the owners of the adjoining premises for the declaration of a private right of access to the road as a public highway and for incidental relief:

Held, a public right of way may be created either by Act of the legislature or by dedication, express or presumed, by the owner of the land, to the general public. The acquisition in suit did not create any public statutory road. The declaration of a "public purpose" did not make the road a public road. The "public purpose" was under S. 38 of the Port Commissioners Act of 1870, for the purpose of that Act. By the conveyance the land became vested in the Port Commissioners.

In order to constitute a valid dedication to the public of a highway by the owner of the soil, there must be an *animus dedicandi*, of which user by the public is evidence and no more. 33 Cal. 1243.

A road made over the petitioner's land to trenching ground to which a name was given by the municipality, was not used as road after the trenching ground was closed;

Held, that as the road was originally used for a temporary purpose and there was no fact from which it might be supposed that the petitioner ever intended it to be used permanently, there was no evidence that there was ever any dedication of the road to the public so as to constitute it a public road. Road temporarily used for a public purpose is not public. 46 I. C. 518.

Under S. 38 all public streets vest in the municipal committee; and consequently the absence of the inclusion of the disputed road in the municipal *jamabandi* is *prima facie* good evidence which tends to negative the plea that the road is a public road. 1933 Nag. 267.

Limited dedication.—Public highways cannot be dedicated to a class or to a limited section of the public and such dedication is no dedication at all.

All other rights over other person's property are private whether they belong to a class or to an individual and whether they arise by grant, license, easement, customary right or any other origin: 37 I. C. 377. A person in dedicating land to public use may place such limits as he wishes upon the dedication. There may be a dedication to the public for a limited purpose as, for instance, an access to a particular building or a footway, horseway or driftway but there can be no such thing in law as a public right of way constituted by dedication to only a section of the public. 56 I. C. 1; 1 Lah. 117.

Exclusive right of occupation of street.—This cannot be acquired on a portion of way dedicated to the public. Where a dedication has been established of a high road and where a portion only out of the land so dedicated has been used for that purpose, no person could, by occupation or other user of any part of the road establish a right as against the public, over any part of the land, even had it never been used for the purpose for which it was dedicated. 20 All. 200.

Proposed roads in lay out plans.—The owner of a large plot of land abutting on a highway divided the plot into nineteen small plots and sold them to different persons. These plots were mapped out as abutting on the sides of two parallel roads which were marked out as proposed roads. Each of the purchasers of the plots entered into a contract or covenant with the owner to keep open that portion of the proposed road which stood in front of his plot and to prepare so much of the road. The question arose whether the proposed road was a street within the meaning of Bombay City Municipality Act [corresponding to S. 3, cl. (13) of the Punjab Act]. It was *held* that the propos-

ed road would constitute a street within the meaning of the Act. 30 Bom. 558.

Accessible to the public.—These words mean that any member of the public as such has access to the land : and by "access to" would ordinarily be understood unimpeded entrance upon the land. 15 I. C. 785.

The expression means open to all the public in fact, whether by right or permission. 73 I. C. 725; 1923 Lah. 417.

Spaces not held to be a street.—A lane which is accessible to the public whether permanently or temporarily is "street." The fact that arrangements for lighting and cleaning the lane are made by the *mohalladars* at their expense and that the lane is cemented by them is not material. Even if the *mohalladars* have a right to close the door and exclude the public, the lane would be a street as the public have not as a matter of fact been prevented by any physical obstruction. It would not be a public street. 1922 Lah. 41.

See 1930 Lah. 547.

Where people residing on either side of the lane have a right of access to the lane, the lane becomes a street within the meaning of cl. 13 (a) of S. 3. Cf. 1925 All. 234.

Lane.—The word "lane" is not defined in the Punjab Municipal Act but it signifies a narrow road or a street. 1930 Lah. 547.

Lane having houses accessible from the lane.—Where people residing on either side of the lane have a right of access to the lane it becomes a street within the meaning of S. 3 (12). Cf. 1925 All. 234; 85 I. C. 761.

A space was left vacant between two proposed buildings by the accused. The site of the buildings belonged to the accused. The accused was prosecuted of raising his building more than the width of the street. *Held*, the space was not a street. Cf. 1924 Bom. 365; 81 I. C. 52; 26 Bom. L. R. 216.

Every vacant space.—Grammatically the words "such space" in the second paragraph refer back to the words "every vacant space" at the beginning of the paragraph, and are not connected with the previous paragraph. "Every vacant space" which satisfies certain requirements, is included in the definition if there is no right of way of any sort across it. Logically, too, the words cannot refer back to the first paragraph for the definition would then exclude private streets

which as cl. (2) shows, are included in the term "street."

If, therefore, a vacant space is in fact a road or footway which is accessible to the public, it is a street, and that para. 2 refers only to such vacant spaces as are neither "roads, foot-paths, squares, court-alleys or passages." Cf. 1930 Sindh 30; 122 I. C. 385.

S. 3 (13) (a).—It is expressly laid down by the legislature that a street shall not include any part of a vacant space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid. Where therefore the occupiers of a building can by shutting the gate prevent all persons from having access to a passage, the passage cannot be held to be a street, nor can it be called a lane. 1930 Lah. 547.

Private property when not a street.—Where a person has been declared to be the owner of a piece of land on which several houses abut and when he has the right to prevent all others from using the piece as means of access the land cannot be called a street and the owner is not guilty under S. 172 (1) for building over it. 1925 Lah. 238; 84 I. C. 718.

Land covered by any pavement, verandah or other erection etc.—Onus of proof.—Where such an erection is found to have existed for at least forty or fifty years and before the extension of the Municipal Act and where there is nothing to show what the original width or limits of the street was and where there is nothing to show that erection did not exist before the lane was made or that the erection was thrown out of the main building upon what at the time of the building of the house was a public street or that the erection was not as much a constituent part of the house as the wall which the erections adjoin, it is for the committee to prove that the erection or verandah encroaches on the street. No inference can be drawn from the mere fact that the erection is beyond the main wall of the house. 8 Mad. 64.

Width or extent of the street.—The width of the way which has been dedicated or is presumed to have been dedicated, is a question of fact. All the ground that is between the fences is presumably dedicated as highway unless the presumption is rebutted by the nature of the ground or other circumstances. In the case of an ordinary highway, although it may be of a varying and unequal width, running between fences, one on each side, the right of passage or way, *prima facie*, and unless there be evidence to the contrary, extends to the whole space between the fences, and the public

are entitled to the use of the entire of it as a highway, and are not confined to the part which may be metalled or kept in order for the more convenient use of carriages and foot passengers. Pratt on "Highways," p. 43, 8th edition.

Similarly it has been held in India that the public are entitled to the whole width of the road unimpeded by any article deposited thereon. 11 Mad. 343; 19 Bom. 212; 45 P. R. 1905 Cr.

Sewered. — Under a corresponding section of the Bombay City Municipal Act the word "sewer" has been held to signify a drain or passage to convey off water and filth underground and to refer to the carrying of other water besides liquid filth.

A street cannot be said to be "*sewered*" by the municipality merely because there runs under it a pipe, laid by the municipality, which though carrying off sullage water from certain houses, has no direct connection with the surface of the street.

The municipality cannot be said to have undertaken the responsibility of maintaining a street as a public street when their action has been limited to the mere provision of a pipe disconnected from the street and designed merely to remove excrementitious and other filthy matter from the houses which happen to adjoin the line of the street. 18 I. C. 267.

A lane or street over which the public as such have no right to pass along, does not become "public street" within the meaning of S. 3 (13) of the Act only because there is an underground sewer of old times running under it. S. 56 (g) deals only with public streets, pavements, etc., which vest in the municipality, and not to private lanes.

It was contended that as there was an underground sewer under this lane, the lane was one which was sewerred by the municipality and hence it does fall within the meaning of "public street." I cannot accede to this contention. The underground sewer is one of the old drains of the times of the Muhammadan emperors. The mere fact, that it does exist under the street could not in any way make the street one sewerred out of municipal funds. 1922 All. 386; 70 I. C. 416.

A "street" does not merely mean the actual roadway but includes the houses on either side of it.

Where before the coming into force of the City of Bombay Municipal Act of 1888, a sewage pipe was laid down

in a lane which carried the sullage water of the houses on the two sides of the lane: *Held*, that the lane must be deemed to have been sewered by the municipality and was, therefore, a public street to which S. 305* of the Act had no application. 46 I. C. 519.

What Act to govern the question whether particular land is a public street.—Whether a particular land is a public street or otherwise is to be determined by the application of criteria determining it as mentioned in the Act in force when the suit is brought. 1930 All. 531; 1930 A. L. J. 1039.

- (14) “ vehicle ” shall include bicycles, tricycles and auto-motor cars, and every wheeled conveyance which is used or capable of being used on a public street.

Notes.

There was no corresponding definition in the old Act. The definition has been taken from the Bombay District Municipalities Act of 1901.

Analogous Law:—

Ss. 3 (4), (5), Bengal Municipal Act, 1932.	S. 2 (<i>xxxviii</i>), Cantonment Act, II of 1924.
S. 3 (30), Behar and Orissa Municipal Act, 1922.	S. 3 (<i>o</i>), Central Provinces Municipal Act, II of 1922.
S. 3 (2), Bombay Municipal Boroughs Act, 1925.	S. 3 (6), Madras City Municipal Act, 1919.
S. 3 (17), Bombay District Municipal Act, III of 1901.	S. 3 (5), Madras District Municipal Act, V of 1920.
S. 3 (<i>g</i>), Bombay City Municipal Act, III of 1888.	S. 3 (<i>cliii</i>), Rangoon City Municipal Act, 1922.
S. 3 (13), Calcutta City Municipal Act, III of 1923.	S. 2 (24), U. P. Municipalities Act, 1916.

Every wheeled conveyance, etc.—Trolleys running on rails in the streets of a municipality pushed or pulled by hand and used by contractors for the purpose of carrying materials are vehicles, and subject to vehicle tax, if one is imposed in the municipality: 17 Bom. L. R. 63 ; 27 I. C. 497. Similarly a bicycle with a motor wheel would be covered by the definition which is extensive and not restrictive. Though a notification specifically taxing a motor bicycle cannot apply to the bicycle with an autowheel. *Cf.* 36 I. C. 877 ; 14 A. L. J. 850.

Even without the definition of the term bicycle has been held to be a vehicle driven by the man who rides it. 41 B. 464, 40 I. C. 289.

* Corresponds to S. 171 (1) of the Punjab Municipal Act.

- (15) "Medical Officer of Health" means such person as the committee has appointed Medical Officer of Health, or such person as the Local Government may by notification appoint Medical Officer of Health, or, failing such appointment, the District Medical Officer of Health.

Notes.

This interpretation clause was newly introduced by Punjab Amendment Act of 1923. The definition has now been amended by Act III of 1933.

Analogous Law.—Cf. S. 3 (19) of Bengal Municipal Act, XV of 1932.

- (16) "Factory" shall have the meaning assigned to it in the Indian Factories Act, 1911.

Notes.

This clause has been added by Amendment Act of 1923. According to Indian Factories Act, 1911, "factory" means:—

"(a) Any premises wherein or within the precincts of which, on any one day in the year not less than twenty persons are simultaneously employed and steam, water or other mechanical power or electrical power is used in aid of any process for, or incidental to, making, altering, repairing, ornamenting, finishing or otherwise adapting for use, for transport or for sale any article or part of an article : or

"(b) Any premises wherein or within the precincts of which, on any one day in the year not less than ten persons are simultaneously employed and any such process is carried on, whether any such power is used in aid thereof or not which have been declared by the Local Government, by notification in the Local Official Gazette, to be a factory.

"A declaration under clause (b) may be made in respect of any class of premises, or in respect of any particular premises."

Analogous Law.—S. 3 (xv) of Rangoon City Municipal Act, 1922.

- (17) "public place" means a space which is open to the use or enjoyment of the public, whether or not private property and whether or not vested in the committee.

Notes.

This definition has been introduced by Act III of 1933. The term is used in the following Sections: Ss. 109 (1) (a) (ii), 151, 156, 177.

Analogous Law.—S. 3 (23) of Bihar and Orissa Municipal Act, 1922; S. 3 (1) Central Provinces Act, II of 1922; S. 2 (xxxi), Cantonment Act, II of 1924; S. 2 (18), United Provinces Act, 1916.

- (18) (a) 'built area' is that portion of a municipality of which the greater part has been developed as a business or residential area;
- (b) "unbuilt area" is an area within the municipal limits which is declared to be such at a special meeting of the committee by a resolution confirmed by the Local Government, or which is notified as such by the Local Government.

Notes.

These terms have been defined and introduced by the Amendment Act III of 1933. In view of the introduction of S. 192 in substitution of the old section these terms become very important.

CHAPTER II.**CONSTITUTION OF MUNICIPALITIES**

Procedure
for constitut-
ing municipi-
ality.

4. (1) The local Government may, by notification, propose [any local area to be a municipality under this Act:

Provided that, no military cantonment or part of a military cantonment shall, without the consent of the Governor-General in Council, be [included in any such area].*

(2) Every such notification shall define the limits of the local area to which it relates.

(3) A copy of every notification under the section, with a translation in such vernacular language as the local Government may direct, shall be affixed in some conspicuous place in the court-house of the Deputy Commissioner within whose jurisdiction the local area to which the notification relates lies, and in one or more conspicuous places in that local area.

* Substituted by S. 2 (i) of the Punjab Municipal Amendment Act, 1925, (I of 1925) and has effect from 1st day of Nov. 1911.

(4) The Deputy Commissioner shall certify to the local Government the date on which the copy and translation were so affixed and the date so certified shall be deemed to be the date of publication of the notification.

(5) Should any inhabitant desire to object to a notification issued under sub-section (1), he may, within six weeks from the date of its publication, submit his objection in writing through the Deputy Commissioner to the local Government and the local Government shall take his objection into consideration.

(6) When six weeks from the date of the publication have expired, and the local Government has considered and passed orders on such objections as may have been submitted to it, the local Government may, by notification, declare the local area to be, for the purposes of this Act, a municipality of the first or second class.

(7) The local Government may by notification direct that all or any of the rules made under this Act which are in force in any municipality in the Punjab shall, with such exceptions and adaptations as may be considered necessary, apply to the local area constituted a municipality under this section, and such rules shall forthwith apply to such municipality without further publication.

“(7 a) * [When a local area, the whole or part of which was a notified area under this Act, is declared to be a municipality under this section, the municipal committee shall be deemed to be the perpetual successor of such notified area committee in respect of all its rules, bye-laws, taxes and all other matters whatsoever] † [and the notified area committee shall continue in office, and shall, notwithstanding anything contained in the Act, be deemed to be the municipal committee, until the appointment and election of members is notified by the local Government under S. 12].

(7 b) * [When a local area, the whole or part of which was a small town under the Punjab Small Towns Act, 1922, is declared to be a municipality under this section, the municipal committee shall be deemed to be the perpetual successor of such small town committee in respect of all its rules, bye-laws, taxes and all other matters whatsoever] † [and the Small Town

* Added by S. 2 (ii) of the Punjab Municipal Amendment Act, I of 1925.

† Added by S. 2 of the Punjab Municipal and Small Town Amendment Act, 1929, IV of 1929.

Committee shall continue in office, and shall, notwithstanding anything contained in this Act be deemed to be the municipal committee until the appointment and election of members is notified by the local Government under S. 12].

(8) The local Government may, after consulting the committee, direct, by notification that any municipality be transferred from one class to another.

(9) A committee shall come into existence at such time as the local Government may by notification, appoint in this behalf.

Notes.

Ss. 5 and 198 of Act XX of 1891; S. 3 of Act XIII of 1884.

The Punjab Municipal Amendment Act, 1925, introduced two new sub-clauses 7 (a) and 7 (b) under S. 4. These were amended again by Act IV of 1929. By the amendments on the conversion of a notified area or small town into a municipality the rules, taxes, bye-laws and all other matters applicable to the notified area or small town become applicable to the newly constituted municipality. By the present amendments, the notified area committee or the small town committee existing at the time in these areas will now become the municipal committee of the newly constituted municipality until the appointment or election of new members is notified. There will be thus no break in the constitution of the governing body. The amendment of cl. 1 effected by amending Act of 1925 is only formal.

Commencement of the amendment.—S. 12 of Amending Act 1925 gives a retrospective effect. These amendments must be taken to have been incorporated from the very commencement of Act III of 1911.

Analogous Law:—

S. 8, Bengal District Municipal Act, 1884.

Ss. 6 & 8, Bengal Municipal Act, XV of 1932.

S. 4 of Behar and Orissa Municipal Act, 1922.

Ss. 4 & 7, Bombay Municipal Boroughs Act, 1925.

Ss. 4 & 8, Bombay District Municipal Act, III of 1901.

Ss. 3 & 4, Burma Municipal Act, III of 1898.

S. 3, Cantonment Act, II of 1924.

Ss. 4, 5 & 244, Central Provinces Municipal Act, II of 1922

S. 4, Madras District Municipal Act, V of 1920.

Ss. 3 & 4, United Provinces Municipalities Act, 1916.

Constitution of Municipalities.—Municipality is a certain local area over which the municipal committees exercise their jurisdiction for the welfare of the inhabitants of that area. Unless expressly authorized municipal committees cannot exercise any control in respect of matters relating to

public health, safety or convenience over persons or properties outside the limits of a particular defined area. It becomes necessary, therefore, to define the geographical limits of the municipality.

In England corporations can be created by Royal Charter or by Act of Parliament. There were also corporations at common law and corporations by prescription. In British India, however, all municipal corporations owe their existence to statute. They have no other source than the sovereign power as exercised by the legislature. The procedure for constituting certain inhabited areas into municipalities is laid down in S. 4 while subsequent sections lay down the procedure for revising the boundaries of the already constituted municipalities by way of extension or contraction. When any existing municipality is extended by inclusion of certain areas the area so included is governed by the rules and regulations already existing in the municipality; where, however, any area is excluded from an existing municipality, the rights and liabilities of the excluded area vest in the local Government as laid down in S. 8. Similarly when a municipality is dissolved altogether under S. 10 the rights and liabilities vest in the Government. Though the local Government has to consider the wishes of inhabitants when proposing to dissolve municipalities or when proposing to alter their limits and invites objections to such proposals, and though it has to make the declaration after considering such objections, the power of the Government is absolute subject to the limitation that the change does not work forfeiture of any existing right as against the old corporation. See Abbott, Vol. I, p. 27; Dillon, Vol. I, p. 79.

5. (1) The local Government may, by notification published in the official Gazette and in such other manner as it may determine, declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification:

Notificati
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limits
municipal

Provided that, where the local area is a military cantonment or part of a military cantonment, no notification affecting it shall be published under this section without the previous consent of the Governor-General in Council.

(2) Any inhabitant of a municipality or local area in respect of which a notification has been published under subsection (1) may, should he object to the alteration proposed, submit his objection in writing through the Deputy Commissioner to the local Government within six weeks from the publication of the notification in the Gazette; and the local Government shall take such objection into consideration.

(3) When six weeks from the publication of the notification have expired, and the local Government has considered the objections (if any) which have been submitted under sub-section (2), the local Government may, by notification, include the local area in the municipality.

(4) When any local area has been included in a municipality under sub-section (3) of this section of this Act, and, except as the local Government may otherwise by notification direct, all rules, bye-laws, orders, directions and powers made, issued, or conferred under this Act, and in force throughout the whole municipality at the time, shall apply to such area.

Notes.

This section corresponds to Ss. 194, 195 and 197 of the old Act.

Analogous Law:—

Ss. 9, 9-A, & 9-B, Bengal District Municipal Act, 1884.
Ss. 6 (d), 8, 10, & 11, Bengal Municipal Act, XV of 1932.
Ss. 4 (c), 6 (c) & 8, Behar and Orissa Municipal Act, 1922.
S. 4 (2), Bombay Municipal Boroughs Act 1925.
S. 4, Bombay District Municipal Act, III of 1901.

Ss. 6, 3(b), & 4, Burma Municipal Act, III of 1898.
Ss. 4, & 6, Central Provinces Municipal Act, II of 1922.
S. 4, Madras District Municipal Act, V of 1920.
Ss. 220 & 222, Rangoon City Municipal Act, 1922.
Ss. 3, 4 & 5, United Provinces Municipalities Act, 1916

When the area of a municipality is extended by inclusion of certain new areas, then sections requiring special extension already applicable to the old area will equally apply to the new area without any special extension. Cf. 52 I. C. 386.

Alteration of the limits of the Municipality.—Where revenue boundaries of a town are enlarged so as to include an area outside the boundaries as notified to be the boundaries of the municipality of the said town the area cannot be deemed to become a part of the municipality. The Revenue Board has no power to fix the boundaries for the purposes of the municipal or town act. Cf. 1928 Mad. 1261; 55 M. L. J. 718; 113 I. C. 276.

Notification
intention
exclude
local area
from munici-
pality.

6. The local Government may, by notification and in such other manner as it may deem fit, declare its intentions to exclude from a municipality any local area comprised therein and defined in the notification :

Provided that where the local area is a military cantonment or part of a military cantonment, no notification shall be published under this section in respect of it without the previous consent of the Governor-General in Council.

Notes.

S. 194 of the old Act.

Analogous Law:—

S. 9 (b), Bengal District Municipal Act, 1884.
S. 6 (c), Bengal Municipal Act, XV of 1932.
S. 4 (b), Behar and Orissa Municipal Act, 1922.
S. 4 (2), Bombay Municipal Boroughs Act, 1925.
S. 4 (2), Bombay District Municipal Act, III of 1901.

Ss. 3 (c) & 4, Burma Municipal Act, III of 1898.
S. 4, Cantonment Act, II of 1924.
S. 7, Central Provinces Municipal Act, II of 1922.
S. 4, Madras District Municipal Act, V of 1920.
S. 220, Rangoon City Municipal Act, 1922.
Ss. 3 4, & 5 United Provinces Municipalities Act, 1916.

7. (1) Any inhabitant of a municipality or local area in respect of which a notification has been published under Section 6 may, if he objects to the exclusion proposed, submit his objection in writing to the local Government within six weeks from the publication of the notification, and the local Government shall take his objection into consideration.

Exclusion of local areas from municipality.

(2) When six weeks from the publication of the notification have expired and the local Government has considered the objections (if any) which have been submitted under sub-section (1), the local Government may, by notification, exclude the local area from the municipality.

Notes.

Analogous Laws:—

S. 9 (b) Bengal Municipal Act, 1884.
Ss. 7 & 8, Bengal Municipal Act, XV of 1932.
S. 6, Behar and Orissa Municipal Act, 1922.
S. 4, Bombay Municipal Boroughs Act, 1925.
S. 4, Bombay District Municipal

Act III of 1901.
Ss. 4 & 6 (c), Burma Municipal Act, III of 1898.
S. 7, Central Provinces Municipal Act, II of 1922.
S. 220, Rangoon City Municipal Act, 1922.
S. 4, United Provinces Municipalities Act, 1916.

Ss. 6 and 7 provide for contraction of municipal areas by excluding particular portions from the originally constituted municipal areas. The result of such exclusion is laid down in S. 8.

8. (1) When a local area is excluded from a municipality under S. 7—

(a) this Act, and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under this Act, shall cease to apply thereto ; and

Effect of exclusion of local area from municipality.

(b) the local Government shall, after consulting the committee, frame a scheme determining what portion of the balance of the municipal fund and other property vested in the municipal committee shall vest in His Majesty for the benefit of the local area, and in what manner the liabilities of the committee shall be apportioned between committee and the Secretary of State for India in Council, and on the scheme being notified the property and liabilities shall vest and be apportioned accordingly.

(2) All property vested in His Majesty under sub-section (1) shall be applied under the orders of the local Government to discharging the liabilities imposed on the Secretary of State for India in Council under that sub-section, or for the promotion of the safety, health, welfare or convenience of the inhabitants of the local area.

Notes.

S. 196 of the old Act.

Analogous Law:—

S. 9 (b), Bengal District Municipal Act, 1884.
S. 120, Bengal Municipal Act, XV of 1932.
S. 10, Behar and Orissa Municipal Act, 1922.
S. 4 (4), Bombay District Municipal Act, III of 1901.
S. 6 (a), Burma Municipal Act, III of 1898.

S. 10, Central Provinces Municipal Act, II of 1922.
S. Madras District Municipal Act, V of 1920.
S. 221, Rangoon City Municipal Act, 1922
Ss 4 & 122, United Provinces Municipalities Act, 1916.

Power to exempt municipality from provisions of Act unsuited thereto.

9. (1) Should the circumstances of any municipality be such that, in the opinion of the local Government, any of the provisions of this Act are unsuited thereto, the local Government may, by notification, exempt the municipality or any part of it from the operation of those provisions: and thereupon the said provisions shall not apply to the municipality until applied thereto by notification.

(2) While such exception as aforesaid remains in force, the local Government may make rules for the guidance of the committee and public in respect of the matters excepted from the operation of the said provisions.

Notes.

S. 199 of the old Act.

Analogous Law.—S. 173, Bengal Act, III of 1884; Ss. 13 & 555 of Bengal Act, XV of 1932; S. 205, Burma Act, III of 1898; S. 9, Central Provinces Act, II of 1922; Ss. 7 (2) & 9 of Behar and Orissa Act, VII of 1922; S. 10, United Provinces Municipal Act 1916; S. 67, Punjab District Board Act, 1883.

Municipal Act is a general Act applicable to all the municipalities to be created by the local Government. The Act avoids the necessity of passing separate and special charters for each municipality. In case a municipality to be created be not suited to be clothed with full powers as laid down in the general Act, this section empowers the local Government to exempt it from such provisions of the general Act as are, in the opinion of the local Government, unsuited to it. *Vide* Dillon, Vol. I, § 61. For notifications exempting certain municipalities from operation of certain sections, see author's "Municipal Manual," p. 105.

Provisions of notification under S. 3 (7) are excluded from certain municipalities. Certain municipalities have been excluded from operation of provisions of S. 20 (1).

10. (1) The local Government may, by notification, withdraw from the operation of this Act the area of any municipality constituted thereunder.

Power to
with draw
municipal
area alto-
gether from
operation of
this Act.

(2) When a notification is issued under this section in respect of any municipality, this Act and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under this Act, shall cease to apply to the said area; the balance of the municipal fund and all other property at the time of the issue of the notification vested in the committee shall vest in His Majesty; and the liabilities of the committee shall be transferred to the Secretary of State for India in Council.

(3) All property vested in His Majesty under sub-section (2) shall be applied under the orders of the local Government to discharge the liabilities imposed on the Secretary of State for India in Council by that sub-section, or for the promotion of the safety, health, welfare or convenience of the inhabitants of the local area comprised in the municipality.

Notes.

S. 200 of the old Act.

Analogous Law:—

9 (a), Bengal District Municipal Act, 1884.

Ss. 6 (b), 8, 12 & 120 (2) Bengal Municipal Act, XV of 1932.

Ss. 10, & 80, Behar and Orissa Municipal Act, 1922.

S. 4 (4), Bombay District Municipal Act, III of 1901.

Ss. 6 (3) & (4), Bombay City Municipal Act, III of 1888.

S. 3 (d) & 4, & 6 Burma Municipal Act, III of 1898.

S. 4 & 6 (2), Cantonment Act, II of 1924

S. 8, Central Provinces Municipal Act, II of 1922.

S. 5, Madras District Municipal Act, V of 1920.

S. 121 (2), United Provinces Municipalities Act, 1916.

S. 68, Punjab District Board Act, 1883.

Transfer of liability.—The word liability is not defined. An act of misfeasance or negligence not followed by actual damage will not create liability. Where a plaintiff was driving upon a highway within defendant's district of which the defendant was the highway authority, his pony suddenly put his foot through the crust of the highway and fell. Plaintiff and his pony sustained some injuries. The accident was due to the improper construction of a drain under the highway. The drain had been constructed by some previous highway authority to whose rights and liabilities the defendants had succeeded. The plaintiff claimed that the defendants were liable for the misfeasance of their predecessors. It was *held* that there was no right of action for damages against a highway authority until actual damages had occurred, the preceding highway authority were not under any liabilities which could be passed on to their successors. *Nash v. Rochford Rural District Council*, 3 L. S. G. G. 55.

Dissolution of corporations *see* Dillon, Chapter IX, 5th edition.

See also page 19 of Aiyangar Law of Municipal Corporations, p. 19.

CHAPTER III.

CONSTITUTION OF COMMITTEES.

Constitu-
tion of com-
mittee.

11. There shall be established for each municipality a committee having authority over the municipality and consisting of such number of members not less than five as the local Government may fix in this behalf.

Notes.

S. 5 (1) of the old Act.

The word "five" has been substituted for the word "three" by S. 4 of the Amendment Act, II of 1923.

Analogous Law:—

S. 15, Bengal Municipal Act, XV of 1932.
S. 13, Bengal Municipal Act, 1884.
Ss. 12 & 13, Behar and Orissa Municipal Act, 1922
S. 8, Bombay Municipal Boroughs Act, 1925.
S. 11, Bombay District Municipal Act, III of 1901.
Ss. 4, 5, Bombay City Municipal Act, III of 1888.
S. 7 (1), Burma Municipal Act, III of 1898.

S. 5, Calcutta City Municipal Act, III of 1933.
S. 10, Cantonment Act, II of 1924.
S. 10, Central Provinces Municipal Act, II of 1922.
S. Madras City Municipal Act, 1919.
S. 7, Madras District Municipal Act, V of 1920.
S. 4, Rangoon City Municipal Act, 1922.
S. 6, United Provinces Municipalities Act, 1916.
Ss. 10 and 11, Punjab District Board Act, 1883.

Constitution of committees.—Ss. 4 to 10 lay down the procedure for constituting certain local areas into municipalities; Ss. 11 to 18 lay down the procedure for constituting committees. The committee is the governing body having jurisdiction in the municipality. It is the local authority clothed with the powers given under the Act. Like most other provincial Acts the Punjab Act follows the English model of municipal administration.

Distinction between municipality and municipal committee should be borne in mind. Municipality is the area in which the municipal committee or a corporate body exercises its power under the Act.

A municipal committee presided over by a president who was neither elected nor appointed as a member of the committee nor its president as required by S. 20 of the Punjab Municipal Act, 1911, is not legally constituted, and any order passed by such a meeting is defective and invalid. P. R. No. 46 of 1905 Cr.

Constitution of valid committees.—See 1923 Mad. 260 and 1933 Lah. 435, noted under S. 37.

12. Every such committee shall consist of members appointed by the local Government either by name or by office, or of members elected from among the inhabitants in accordance with rules made under this Act, or partly of the one and partly of the other as the local Government may by notification direct:

Appoi
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election
membe.

Provided that, unless the local Government shall otherwise direct, the appointed members shall not exceed one-fourth of the whole committee.

Notes.

S. 5 (2) of the old Act, sub-clause (a) has been omitted.

The proviso has been amended by the Amendment Act, II of 1923, the words "who are salaried officers of Government" have been omitted and the ratio of nominated members has further been reduced from one-third to one-fourth.

Analogous Law:—

S. 14, Bengal District Municipal Act, 1884.

S. 16, Bengal District Municipal Act, XV of 1932.

S. 13 of Behar and Orissa Municipal Act, 1922.

S. 9, Bombay Municipal Boroughs Act, 1925.

S. 10, Bombay District Municipal Act, III of 1901.

S. 5, Bombay City Municipal Act, III of 1888.

S. 7, (1) (b), Burma Municipal Act, III of 1898.

S. 5, Calcutta City Municipal Act, III of 1923.

S. 14 of Cantonment Act, II of 1924.

S. 10, Central Provinces Municipal Act, II of 1922.

S. 7 (2), Madras District Municipal Act, V of 1920.

S. 7, Rangoon City Municipal Act, 1922.

S. 9, U. P. Municipalities Act, 1916.

So far as Simla and Dalhousie are concerned the local Government has directed that the proviso shall not apply. See P. G. Notification No. 14505, dated 1st May 1923, and No. 14446-A., dated 30th April 1923.

S. 12-A regarding oath of allegiance was introduced by Amendment Act, II of 1923 but the Punjab Amendment Act, III of 1933 has omitted this section from this place and has incorporated the provisions in S. 24.

13. (1) **If a member of committee is appointed by office, the person for the time being holding the office shall be a member of the committee until the local Government shall otherwise direct, or until there has been issued a notification of elections after a general election.**
- (2) **The term of office for which all other members of committee shall be appointed and elected, respectively shall be fixed by the local Government by rules made under this Act, and may be so fixed as to provide for the retirement of members by rotation, but shall not exceed three years.**
- (3) **Notwithstanding any thing contained in sub-section (2) or in any rules made by the local Government thereunder, an outgoing member shall, unless the local Government otherwise directs, continue in office until election or appointment of his successor is notified.**
- (4) **An outgoing member may, if otherwise qualified, be re-elected or re-appointed.**
- (5) **When as the result of an enquiry held under Chapter XIV an order declaring the election of any member void has been notified, such member shall forthwith cease to be a member of the committee.**

Notes.

S. 6 of the old Act, Cl. 3 is new. The new clause was introduced to continue the existence of the committee if no election or appointment is made after the expiry of the term of existing members, or if after election the appointment is not notified. Cl. 1 has been amended by Amendment Act, III of 1933 by addition of last fourteen words in italics. When a general election is notified the nominated members will also cease to hold office as members and special notification directing that the nominated members shall cease from a particular date will not be required. Cl. 5 has been newly added by Amendment Act, III of 1933.

Analogous Law:—

S. 21, Bengal District Municipal Act, 1884.
S. 56, Bengal Municipal Act, XV of 1931.
Ss. 29 and 31, Behar and Orissa Municipal Act, 1922.
S. 25, Bombay Municipal Boroughs Act, 1925.
Ss. 17 and 19, Bombay District Municipal Act, III of 1901.
S. 7, Bombay City Municipal Act, III of 1888.
S. 9, Burma Municipal Act, III of 1898.

S. 39, Calcutta City Municipal Act, III of 1923.
S. 16, Central Provinces Municipal Act, II of 1922.
Ss 55 and 60, Madras City Municipal Act, 1919.
Ss. 8 (1) (2) and 10, Madras District Municipal Act, V of 1920.
S. 8, Rangoon City Municipal Act, 1922.
S. 38, United Provinces Municipalities Act, 1916.
S. 12, Punjab District Board Act, 1883.

The tenure of office may terminate earlier either by death, resignation or removal. *See* Ss. 15, 16 and 17 providing for these contingencies.

By Notification No. 17877, dated the 25th September 1917, the term of office of all members whether appointed or elected, except members appointed by office, has been fixed at three years.

Validity of notice—Committee not validly constituted.—

In a case it was contended that as more than one outgoing member cannot continue a member, the committee was not validly constituted. It was *held* that there was nothing in the subject or context of the Act repugnant to the application of provisions of S. 13 (3) to more than one outgoing member. 1932 Lah. 26; 134 I. C. 113; 33 P. L. R. 83.

14. Notwithstanding anything in the foregoing sections of this chapter, the local Government may, at any time, for any reason which it may deem to affect the public interests, or at the request of a majority of the electors, by notification direct—

Power
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- (a) that the number of seats on any committee shall be increased or reduced ;
- (b) that any places on a committee which are required to be filled by election shall be filled by appointment, if a sufficient number of members has not been elected;
- (c) that a seat on any committee which is then filled by election shall thenceforth, when vacant, be filled by appointment ;
- (d) that a seat on any committee then filled by appointment, shall thenceforth, when vacant, be filled by election;

- (e) that the seat of any specified member, whether elected or appointed, shall be vacated on a given date, and in such case, such seat shall be vacated accordingly notwithstanding anything in this Act or in the rules made thereunder.

Notes.

Ss. 5 (3), 7, 8 and 9 of the old Act.

Analogous Law :—

- S. 8, Bengal District Municipal Act, 1884.
S. 8 (9), Bengal Municipal Act, XV of 1932.
S. 14, Behar and Orissa Municipal Act, 1922.
S. 9 (2), Bombay Municipal Boroughs Act, 1925.

Ss. 11, 14 (b), Bombay District Municipal Act, III of 1901.

S. 9, Burma Municipal Act, III of 1898.

S. 10, United Provinces Municipalities Act, 1916.

English Law :—

S. 39, Municipal Corporation Act, 1882.

Resignation
of member
of committee.

15. If a member of a committee wishes to resign his office he shall submit an application in writing through the Deputy Commissioner to the local Government. If such resignation is accepted, it shall be notified in the Gazette on a date not less than 15 days and not more than 60 days after the receipt of the said member's application by the Deputy Commissioner whereupon the member shall be deemed to have vacated his seat :

Provided that if a member who has submitted an application to resign wishes to withdraw his resignation he may apply to the Deputy Commissioner within 15 days of the receipt by the Deputy Commissioner of his application to resign, and the application to resign shall then be deemed to have been withdrawn.

Notes.

S. 10 of the old Act.

Analogous Law :—

- S. 27 (A), Bengal District Municipal Act, 1884.
S. 33, Behar and Orissa Municipal Act, 1922.
S. 26, Bombay Municipal Boroughs Act, 1925.
S. 15-(A), Bombay District Municipal Act, III of 1901.
S. 10, Burma Municipal Act, III of 1898.
S. 40, Calcutta City Municipal Act, III of 1923.

S. 19, Cantonment Act, II of 1924.

S. 21, Central Provinces Municipal Act, II of 1922.

S. 35, Madras City Municipal Act, 1919.

S. 39, United Provinces Municipalities Act, 1916.

S. 13, Punjab District Board Act, 1883

English Law :—

S. 36, Municipal Corporation Act, 1882.

The section has been considerably amended by S. 6 of Act III of 1933. According to S. 15 as it stood

before amendment, the resignation was submitted through the president to Deputy Commissioner who, it was understood, will forward it to local Government for orders. The president has ceased to be the channel of communication. It is now expressly provided that the Deputy Commissioner will forward the resignation to local Government. There was no power of withdrawal of the resignation. This has now been provided and the resignation can be withdrawn within a certain time.

English law.—Under English law under the Municipal Corporation Act, 1882 a person elected to a corporate office can resign his office on payment of a fine provided for non-acceptance of office.

Withdrawal.—It was held that the resignation binds the giver of it and cannot be withdrawn even with the consent of the council: *R. v. Wigan Corporation* (1885) 14 Q. B. D. 908. The office does not become vacant until it is formally declared to be so, but in the interval the resigning member cannot act. *Pease v. Lowden* (1899) 1 Q. B. 386.

Resignation and renunciation—Need for acceptance.—Resignation of an office ends the incumbent's connection with it on acceptance. It may be that the need for acceptance does not apply to honorary appointments and it is a question of fact in each case whether the resignation amounts to renunciation without acceptance and may depend to a certain extent on the contents of the letter of resignation. 45 M. L. J. 798; 1924 Mad. 396; 76 I. C. 813.

Refusal to accept.—Power to accept implies power to refuse. The local Government will be justified in refusing to accept a resignation.

16. (1) The local Government may, by notification, remove any member of committee—

- (a) if he refuses to act, or becomes, in the opinion of the local Government, incapable of acting, or has been declared a bankrupt or an insolvent or has been convicted of any such offence or subjected by a Criminal Court to any such order as implies, in the opinion of the local Government, a defect of character which unfits him to be a member;
- (b) if he has been declared by notification to be disqualified for employment in, or has been dismissed from, the public service and the reason for the disqualification or dismissal is such as implies, in the opinion of the local Government, a defect of character which unfits him to be a member ;

Powers of the local Government as to removal of members.

- (c) if he has* [without reasonable cause in the opinion of the local Government] absented himself for more than three consecutive months from the meetings of the committee ;
- (d) if his continuance in office is, in the opinion of the local Government, dangerous to the public peace or order;
- (e) if, in the opinion of the local Government, he has flagrantly abused his position as a member of the committee and has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee;
- (f) in the case of an elected member, if he has, since his election, become subject to any disqualification which, if it had existed at the time of his election, would have rendered him ineligible under any rule for the time being in force regulating the qualifications of candidates for election, or if it appears that he was at the time of his election subject to any such disqualification;
- (g) if, being a legal practitioner, he acts or appears in any legal proceeding, on behalf of any person against the committee, or on behalf of or against the Crown or the Secretary of State for India in Council where, in the opinion of the local Government, such action or appearance is contrary to the interests of the committee :

Provided that before the local Government notifies the removal of a member under this section the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing; and

(2) A person removed under this section or whose seat has been vacated under the provisions of Section 14 (e) or whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of Section 24, or whose election has been declared void for corrupt practices or intimidation under the provisions of Section 255, or whose election the local Government has under Section 24 refused to notify, shall be disqualified for election for a period not exceeding five years:

Provided that a person whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of Section 24, shall not be disqualified for election or appointment for a period exceeding two years from the date of disqualification.

* Inserted by S. 7 of Punjab Act, II of 1923.

Notes.

S. 11 of the old Act. Sub-clause (b) has been enlarged by the additions of words beginning from "and the reason, &c."

Sub-clause (e) is new. Cl. (2) has been enlarged so as to cover cases other than those of removal.

The additions to Cl. (b) was one of the few amendments accepted in the Bill as presented by the Select Committee.

Clause (c) of S. 16 has now been amended by the addition of words "without reasonable cause in the opinion of local Government." A proviso to sub-section (1) has also been added. Before the Government takes action under this section opportunity will now be afforded to the member to furnish explanation.

Analogous Law:—

Ss. 20 & 22, Bengal District Municipal Act, 1884.
Ss. 62 & 63, Bengal Municipal Act, XV of 1932.
Ss. 35 & 36, Behar and Orissa Municipal Act, 1922.
Ss. 27 & 28, Bombay Municipal Boroughs Act, 1925.
S. 16, Bombay District Municipal Act, III of 1901.
S. 17, Bombay City Municipal Act, III of 1888.
S. 11, Burma Municipal Act, III of 1898.
Ss. 41 & 42, Calcutta City Municipal Act, III of 1923.

Ss. 34 & 35, Cantonment Act, II of 1924.
S. 22, Central Provinces Municipal Act, II of 1922.
S. 53, Madras City Municipal Act, 1919.
S. 13, Rangoon City Municipal Act, 1922.
Ss. 40 & 41, United Provinces Municipalities Act, 1916.
S. 14, Punjab District Board Act, 1883.

English Law:—

S. 39, Municipal Corporation Act, 1882.

Recent changes.—Proviso to Cl. 1 was added by S. 7 of Act, II of 1923. This proviso has further been amended in its present form by S. 7 of Act, III of 1933. Sub-clause (e) has been amended by S. 7 of Act, III of 1933, by the addition of portion in italics. This addition is in keeping with the amendment of S. 50. Similarly Cl. 2 has been altered to meet the changes introduced by Act, III of 1933.

Power of amotion.—Municipal committees are not themselves invested with any powers of removal of councillors for misconduct or for any other cause under the Act. So far as Punjab is concerned we cannot invoke the inherent power of municipal corporations to disfranchise any member of such corporations. See p. 44, Arnold's "Municipal Corporation Act," 6th edition.

Declared a bankrupt or insolvent.—The distinction between the words "bankrupt" and "insolvent" is not observed: both terms have been used in the same sense as the use of the word "declare" shows. Insolvent is the term adopted by the Indian legislature while "bankrupt" is used in parliamentary legislature.

It will be noticed that a member may have committed an act of insolvency but he cannot be removed unless he has been declared an insolvent. In some cases a member who is practically bankrupt and is guilty of acts of insolvency still continues a member. This state of affairs is very undesirable.

Composition with creditors, transfer of property to trustees for benefit of creditors, sale of property in execution of decree for payment of money, notice to creditors of suspension of payment and imprisonment in execution of decree are some of the acts of insolvency too glaring to be overlooked. These should also be considered as sufficient causes for removal.

Section 16, Sub-clause 16 (c)—Absence of member for three months.—The absence is to be counted from the date of his first default from attending the meeting. When a member did not attend a meeting held on 10th July 1926 and 12th August 1926 and attended a meeting on 13th November 1926 there was no meeting in September and October, *held* that the member was absent for three months. 1928 Mad. 983, 112 I. C. 710.

The period of three months is to be computed from the first default in attendance and there must be at least two meetings which a member has failed to attend for the subsection to apply. Cf. 1926 Mad. 830.

The failure to attend meetings during three consecutive months is to be computed forward from the dates of the first failure, not backward from the last. Cf. 1931 Mad. 138.

Restoration of members.—Where a member ceases to hold office owing to his absence from meetings and is then restored under rules by the resolution of the Board the effect of restoration of a member is certainly to restore him to the office of membership for the balance of the period for which he was originally elected or nominated including the rest of the day on which he was restored. He does not become a new member getting a fresh full period of office on the date of the restoration. He is restored to his former membership, that is, the membership he previously held by election or by nomination completed by the oath of allegiance that he had previously taken. Where a member of a

taluk board who had also been elected to the district board lost his membership of the taluk board for absence for three months and thereby lost his membership of the district board also, by restoration he is not restored to the membership of the district board which he lost. *Cf.* 1926 Mad. 396, 92 I. C. 100.

The removal of member from membership carries with it loss of office which he held before removal, and on his restoration he is not restored to office. 1925 Mad. 1034, 87 I. C. 363.

Unjustifiable removal.—Under a corresponding provision in the Towns Improvement Act (Madras Act, III of 1871) it was held that the Secretary of State for India in Council was liable for damages for illegal and unjustifiable removal of a municipal commissioner: 7 Madras 466. The opinion of local Government, however, after explanation offered is final. 6 I. C. 604.

Removal.—This will not empower suspension. 37 Mad. 55; 21 Mad. 179. *Barton v. Taylor*, (1886) 11 A. C. 197 at p. 205.

Power of censure.—Municipal councils have no power to sit in judgment upon or censure the conduct of their members, where no such power is given them by statute or by general law. A resolution censuring the conduct of a member is unlawful and should be rescinded: "Canadian Municipal Manual," p. 50. Indirectly, however, the committee can bring the conduct of any member to the notice of Government for action under S. 16 of the Municipal Act.

Similarly a censure motion against the president will not be entertainable though a motion for removal of the president on grounds which involve this censure is competent.

17. (1) Whenever a vacancy occurs by the death, resignation or removal otherwise than under the provisions of Section 14 (e) of any elected member or by the vacation of his seat under the provisions of sub-section (5) of Section 13 a new member shall be elected in accordance with the rules made under this Act to fill the place:

Casual
vacancies
committe

Provided that the local Government may direct in any such case that the vacancy shall be left unfilled;

Provided further that if no qualified candidate appears for election, the local Government may appoint a member to fill the vacancy.

(2) Upon the death, resignation or removal of any appointed member, or when a member's seat has been vacated under the provisions of Section 14 (e), the local Government may, if it shall think fit, fill his place, either by appointment or by election.

(3) Every person elected or appointed to fill a casual vacancy shall hold his seat for the time for and subject to the conditions upon which it was tenable by the person in whose place he has been so elected or appointed, and no longer: but he may, if otherwise qualified, be re-elected or re-appointed.

Notes.

S. 12 of the old Act, with such changes as are necessitated by the provisions of S. 14 (e) of the present Act.

Recent changes.—The words in italics were inserted by S. 8 of Act, III of 1933.

Analogous Law:—

- S. 27, Bengal District Municipal Act, 1884.
- S. 58, Bengal Municipal Act, XV of 1932.
- S. 30, Behar and Orissa Municipal Act, 1922.
- S. 29, Bombay Municipal Boroughs Act, 1925.
- S. 18, Bombay District Municipal Act, III of 1901.
- S. 9, Bombay City Municipal Act, III of 1888.
- S. 12, Burma Municipal Act, III of 1898.
- S. 43, Calcutta City Municipal Act, III of 1923.

S. 16, Cantonment Act, II of 1924.

S. 17, Central Provinces Municipal Act, II of 1922.

Ss. 55 (3) & (4) & 61, Madras City Municipal Act, 1919.

S. 8 (3) & (4) & 11, Madras Municipal Act, V of 1920.

S. 9, Rangoon City Municipal Act, 1922.

S. 13, United Provinces Municipalities Act, 1916.

S. 15, Punjab District Board Act, 1883.

English Law:—

S. 40, Municipal Corporation Act, 1882.

Casual Vacancy.—It is one which arises otherwise than by effluxion of time. The occasions when a casual vacancy occurs are enumerated in the section.

Vacancy caused by resignation.—The person resigning is disqualified from standing.—S. 17 clearly excludes the person whose resignation or removal caused the vacancy that is to be filled up and that being so it is clearly a disqualifying section, disqualifying from the bye-election the person by whose resignation or removal the vacancy was caused. Cf. 1933 Cal. 443=143 I. C. 602.

The expression “new member” in S. 17 excludes the person whose resignation or removal has caused the vacancy to be filled up. 1933 Cal. 443; 143 I. C. 602.

Incorporation of committee.

18. Every committee shall be a body corporate by the name of the municipal committee of its municipality; and shall have perpetual succession and a common seal, with power to acquire and hold property, both moveable and immoveable, and subject to the provisions of this Act, or of any rules made thereunder to transfer any property held by it and to contract and to do all other things necessary for the purposes of its constitution; and may sue and be sued in its corporate name.

Notes.

S. 13 of the old Act.

Analogous Law:—

- S. 29, Bengal District Municipal Act, 1884.
- Ss. 15 (2) & 94, Bengal Municipal Act, XV of 1932
- Ss. 12, 62 & 64, Behar and Orissa Municipal Act, 1922.
- Ss. 8, 48 & 63 (1) Bombay Municipal Boroughs Act, 1925.
- Ss. 9, 40 (1) & 50 (1), Bombay District Municipal Act, III of 1901.
- Ss. 4 (2) & 87, Bombay City Municipal Act, III of 1888.
- S. 13, Burma Municipal Act, III of 1898.
- Ss. 5 & 66, Calcutta City Municipal Act, III of 1923.

- S. 12, Cantonment Act, II of 1924.
- S. 37, Central Provinces Municipal Act, II of 1922.
- S. 5 (2), Madras City Municipal Act, 1919.
- S. 6 (2), Madras District Municipal Act, V of 1920.
- Ss. 4, 37 & 42, Rangoon City Municipal Act, 1922.
- S. 6, United Provinces Municipalities Act, 1916.
- S. 16, Punjab District Board Act, 1883.

English Law:—

- S. 7, Public Health Act, 1875.
- Ss. 8 & 10, Municipal Corporation Act, 1882.

Corporation.—Under English law, it should be noted that it is the inhabitants who are incorporated and not the council through whom they act. In India it is the council or governing body which is incorporated and not the inhabitants.

Body corporate.—A corporation is a person which exists in the eye of law and not physically; it is a legal person with a special name, composed of such members and endowed with such powers as the law prescribes. The section gives to the body of committee the principal characteristics of a "corporation," *viz.*—

1. The individual composing it constitutes one body, *i.e.*, it has an existence separate and distinct from the individuals composing it.

2. It has "perpetual succession," *i.e.*, it has an unending existence or rather indefinite duration, irrespective of the life of the particular individuals composing it; it has a continuous legal identity, however the individuals composing it may change.

3. It has a common name which expresses that it is a person in the eye of law and declares its continuous legal identity.

4. It has a common seal which is the corporate signature, the expression of corporate will and deed, for it speaks and acts only by its common seal, which declares the joint assent of all the members in what is said and done.

5. It resembles a natural person in many respects as regards rights, obligations and powers. The section declares

that the municipal body corporate can sue and be sued ; it can acquire and dispose of property, it can enter into contracts, do many other things and is subject to various obligations under the Act. (*See* Brice on "Ultra Vires," 3rd edition, pp. 551-9).

The Act expressly makes the municipal committee a body corporate. Where, however, the rules of Act constituting a committee are silent, but the committee has all the characteristics of a corporation, it will be treated as a corporation. *Cf.* 14 Bom. 286.

Municipal Corporation.—It is a legal institution formed by legislature or by charter from sovereign power, erecting a populous community of prescribed area into a body politic and corporate with corporate name and continuous succession and for the purpose and with the authority of subordinate self-government and improvement and local administration of affairs of state. Dillon defines a municipal corporation as "the incorporation by the authority of Government of the inhabitants of a particular place and district and authorizing them in their corporate capacity to exercise subordinate specified power of legislation and regulation with respect to their local and internal concerns. This power of local Government is the distinctive purpose and distinguishing feature of a municipal corporation proper." Punjab Act, like other provincial Acts, incorporates the select body and not the inhabitants of a municipality.

Various kinds of corporations.—There are several classes of corporations, such as public municipal corporations, the leading object of which is to promote the public interest; corporations technically private, but yet of a *quasi*-public character, having in view some great public enterprise in which the public interests are directly involved to such an extent as to justify conferring upon them important governmental powers. Of this class are rail-road, turn-pike, and canal companies; and corporations strictly private, the direct object of which is to promote private interests and in which the public has no concern, excepting the indirect benefits resulting from the promotion of trade and the development of the general resources of the country. The rights and powers, the duties and obligations of a public corporation, as compared with those of a private corporation, are marked. A public corporation is really an agency of the state, of the sovereign. It is organised to carry out some local political want as auxiliary to the sovereign power. It is a governmental agent created for the benefit of all affected; it is created and exists through the mere will of the legislature as the delegated agency of the sovereign and is independent of all contract as between itself and the

sovereign. On the other hand, a private corporation is organised primarily for the benefit, generally pecuniary, of its members; for the advantages of the few as compared with the many. Public corporations are generally further classified into public, municipal and public-*quasi* corporations, according to the varying power of local action or initiative.

A modern municipal corporation has two aspects: one governmental and the other *quasi*-private. In the former, it is the agent of the state for local administration and for enforcement of its sovereign power. In the latter, it transacts private business for hire, as for instance, when it undertakes to supply to those inhabitants who will pay therefor utilities and facilities of modern life. The fundamental objects of a municipal corporation are the public welfare and municipal government. (Abbot on "Municipal Corporations," Vol. I, pp. 3-7.)

Advantages of municipal corporations.—Municipal corporations are institutions *designed for the local Government of important towns and cities*, or more accurately, towns and cities with their inhabitants. Government by municipal corporation is admittedly the highest form of local self-government existent; and it is a form of government which is sought to a very large extent by the inhabitants of a particular locality for protecting themselves against absorption by larger and more powerful adjoining authority. As observed by De Tocqueville, "Local assemblies of citizens constitute the strength of free nations. Municipal institutions are to liberty what primary schools are to science. They bring it within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government but without the spirit of municipal institutions, it cannot have the 'spirit of liberty.'" As observed by Mr. Justice Brown in *People v. Draper*, 15 N. Y. 532 at p. 562: "Wherever the Anglo-Saxon race have gone, wherever they carried their language and laws, these communities, each with a local administration of its own selection, have gone with them. It is here that they have acquired the habits of subordination and obedience to the laws, of patient endurance, resolute purpose and knowledge of civil government which distinguish them from every other people. Here have been the seats of modern civilisation, the nurseries of public spirit and the centres of constitutional liberty. They are the opposites of those systems which collect all power at a common centre, to be wielded by a common will and to effect a given purpose, which absorb all political authority, exercise all its functions, distribute all its patronages, repress the public activity, stifle the

public voice, and crush out the public liberty." As Professor Dicey observes, these points in the clearest manner to the real predominance or supremacy of the law as the distinguishing characteristic of English institutions. To civil territorial divisions erected into corporations are due that familiarity with public affairs, that love of liberty, that regard to private rights and property, and that universal reverence for obedience to law which are characteristic of the best governments in Europe, Great Britain, and the best in America and United States. (Dillon, pp. 29-33 and Aiyangar's "Law of Municipal Corporation in India," pp. 5-6).

Defects.—The usefulness of municipal corporations has been impaired by evils that are inherent in them and that have generally accompanied their workings. Generally, men the best fitted by their intelligence, business experience, capacity and moral character are not always chosen as municipal councillors. Further, municipal councillors too often merge their individual conscience in their corporate capacity. "It is a familiar fact," says Herbert Spencer, "that the corporate conscience is ever inferior to the individual conscience, that a body of men will commit, as a joint act, that which every individual of them would shrink from, did he feel personally responsible." Against corporations, men usually honest and fair in their dealings do not scruple to make demands which they will never make against individuals. Under the shield of their corporate character, men but too often do acts which they would never do as individuals. The public as if to retaliate, acts towards corporations in the same spirit. The administration of the affairs of municipal corporations is too often unwise and extravagant. These evils must be borne in mind and the legislature has been solicitous to check these evils and the courts also have been too careful to keep municipal corporations under strict control: (Dillon, p. 30.) To these may be added evils peculiar to India. Communal considerations in some parts too often mar the administration of municipal affairs.

Scope of municipal powers. - Municipal committees are creatures of legislature and have only such powers as are specifically given to them and such as by necessary implication arise from powers expressly given. A municipal committee in India like Anglo-American Local Corporation is an authority of enumerated powers and not an authority of general powers. The Anglo-American Local Corporation may do only those things which the legislature says that it may do. The European Local Corporations may do every thing which the legislature of the State has not plainly for-

bidden it to do. This distinction between the position of local authorities has a far-reaching effect.*

Extent of power, limitations and rules of construction.
 —No better or more authoritative statement of the powers possessed by municipal corporations can be found than that given by Judge Dillon in his great work on "Municipal Corporations." He says: "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation, not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied. Of every municipal corporation the charter or statute by which it is created is its organic Act. Neither the corporation nor its officers can any do, act, or make any contract, or incur any liability,

*At first blush the difference in the position of the American city from that of the European city may not seem to be of great importance. A more careful study of the matter, will, however, show that this difference is crucial. For the American state legislature has been, one might almost say, irresistibly tempted so to make use of its well-recognised powers over the cities subject to its jurisdiction, as to deprive them of most of their functions of local Government, and to make them the playthings of state and national party politics. Under these conditions a scientific solution of the vexed question of municipal organization has been impossible, and the proper discharge by the cities of the functions necessary to the welfare of the urban population has been seriously interfered with if not absolutely prevented.

It has been said that the exercise of its powers by the legislature has deprived cities of their power of local government. The result has come about in the following way: No legislature is far-seeing enough to be able to determine for all time what powers it may be expedient for a city to exercise. No legislature, even under the *regime* of special city charters, can give a particular city powers which will be permanently satisfactory so long as these powers are enumerated in detail. The conditions, economic and otherwise, upon which city governments are based, are continually changing. As a result of these changing conditions American cities are forced to apply continually to the legislature for new and extended local powers. Such powers are often granted retrospectively through the exercise of the power the legislature possesses to ratify illegal action. (Goodnow on "City Government in the United States," p. 76.) These observations apply equally to municipal corporations in England and India.

not authorized thereby, or by some legislative Act applicable thereto. All acts beyond the scope of the powers granted are void. Much less can any power be exercised, or any act done, which is forbidden by charter or statute. These principles are of transcendent importance, and lie at the foundation of the law of municipal corporations. Their reasonableness, their necessity, and their salutary character have been often vindicated, but never more forcibly than by the learned Chief Justice Shaw, who, speaking of municipal and public corporations, says: 'They can exercise no powers but those which are conferred upon them by the Act by which they are constituted, or such as are necessary to the exercise of their corporate powers, the performance of their corporate duties, and the accomplishment of the purposes of their association. This principle is derived from the nature of corporations, the mode in which they are organized, and in which their affairs must be conducted.'

" 'In aggregate corporations, as a general rule,' continues Chief Justice Shaw, 'the act and will of a majority is deemed in law the act and will of the whole,—as the act of the corporate body. The consequence is that a minority must be bound not only without, but against, their consent. Such an obligation may extend to every onerous duty, to pay money to an unlimited amount, to perform services, to surrender lands, and the like. It is obvious, therefore, that if this liability were to extend to unlimited and indefinite objects, the citizen, by being a member of a corporation, might be deprived of his most valuable personal rights and liberties. The security against this danger is in a steady adherence to the principle stated, *vis*, that corporations can only exercise their powers over their respective members, for the accomplishment of limited and defined objects. And if this principle is important, as a general rule of social right and municipal law, it is of the highest importance in these states, where corporations have been extended and multiplied so as to embrace almost every object of human concern.' The language of another learned Judge on this subject is well chosen, and fittingly supplements that which we have quoted in the preceding section. 'In this country,' says Church, J., 'all corporations, whether public or private, derive their powers from legislative grant, and can do no act for which authority is not expressly given, or may not be reasonably inferred. But if we were to say that they can do nothing for which a warrant could not be found in the language of their charters, we should deny them, in some cases, the power of self-preservation, as well as many of the means necessary to effect the essential objects of their incorporation. And therefore it

has long been an established principle in the law of corporations, that they may exercise all the powers within the fair intent and purpose of their creation which are reasonably proper to give effect to powers expressly granted. In doing this, they must (unless restricted in this respect) have a choice of means adapted to ends, and are not to be confined to any one mode of operation."

The extent of the powers of municipalities, whether express, implied, or indispensable, is one of construction. And here the fundamental and universal rule, which is as reasonable as it is necessary, is, that while the construction is to be just, seeking first of all for the legislative intent in order to give it fair effect, yet any ambiguity or fair, reasonable, substantial doubt as to the extent of the power is to be determined in favour of the state or general public, and against the state's grantee. The rule of strict construction of corporate powers is not so directly applicable to the ordinary clauses in the charter or incorporating Acts of municipalities as it is to the charters of private corporations; but it is equally applicable to grants of powers to municipal and public bodies which are out of the usual range, or which grant franchises, or rights of that nature, or which may result in public burdens, or which, in their exercise, touch the right to liberty or property, or, as it may be compendiously expressed, any common-law right of the citizen or inhabitant. The rule of strict construction does not apply to the mode adopted by the municipality to carry into effect powers expressly or plainly granted, where the mode is not limited or prescribed by the legislature, and is left to the discretion of the municipal authorities. In such a case the usual test of the validity of the act of a municipal body is, whether it is reasonable, and there is no presumption against the municipal action in such cases. The general principles of law, stated in this and in the preceding sections are indisputably settled, but difficulty is often experienced in their application on account of the complex character of municipal duties, and the various, miscellaneous, and frequently indefinite purposes or objects which municipalities are authorised to execute or carry into operation. Dillon's "Law of Municipal Corporation," pp. 448 to 455.

Doctrine of "*ultra vires*."—The term *ultra vires* literally means "beyond the power of the corporation itself." The true meaning of what is meant by *ultra vires* is that a corporation has certain powers only and that it can be bound only when acting whether directly or through agents within the limits of those powers. The cardinal principles of the

doctrine of *ultra vires* are thus laid down by Brice in his work on "Ultra Vires":

1. A corporation has all the capacities for engaging in transactions which are expressly given it by the constating instruments.

2. A corporation has all the capacities for engaging in transactions which are impliedly given it by reasonable implication from the language of the constating instruments.

3. A corporation has all the capacities or powers for management which are given by its constating instruments, either expressly or by reasonable inference therefrom.

4. Capacities or powers for management may be given by wide general language.

5. Corporations have no capacities or powers other than those indicated in the four previous propositions, and they cannot legally or validly engage in other transactions.

6. Courts in dealing with corporations will look to those capacities and powers only which they actually possess at the time.

7. Corporations cannot be rendered directly liable upon *ultra vires* transactions, but must account for benefits received therefrom.

8. Special proceedings rendered necessary by unexpected circumstances, which, but for such circumstances would be *ultra vires*, will sometimes be upheld as necessitated and therefore rendered justifiable by the circumstances.

9. Formalities are generally not imperative but merely directory, and therefore the absence of them can be set up against those persons only who were cognisant of the defect.

10. Franchises and special privileges or powers in the nature of franchises cannot be delegated.

11. Special powers of whatever description can be used only *bona fide* for the purposes for which created.

12. The capacities and powers of the governing body, and *a fortiori*, those of the subordinate agents of a corporation, cannot be greater, and will generally be much more restricted than those of the corporation.

13. Any party to an *ultra vires* transaction may set up the defence thereof, and any one corporator may call upon the courts to restrain the corporation from engaging therein. Aiyangar, "Law of Municipal Corporations," p. 194.

Remedy against—ultra vires exercise of powers.—Where a gas or water company incorporated by parliamentary authority attempts to go beyond its powers, either as to limits of supply or in any other way, the question arises, what is the remedy? The general rule may be stated thus: No action can be maintained by any individual unless he sustains particular injury, because the powers conferred by Parliament being for the public benefit, the public only are entitled to complain; nevertheless, by obtaining the assent of the Attorney-General, proceedings may, in certain circumstances be taken by the individual in the name of Attorney-General (his approval having been first obtained), “on the relation” of the individual. In *Liverpool Corporation v. Chorley Waterworks Co.* (1852) 2 De. G. M. & G. 852, Lord Cranworth decided that persons obtaining from the legislature power to interfere with the rights of property are bound strictly to adhere to the powers so conceded to them; to do no more than the legislature has sanctioned, and to proceed only in the mode which the legislature has pointed out; but (except in a proceeding at the instance of the Attorney-General) anyone seeking the assistance of the court to restrain the violation of such a contract with the legislature is bound to show that he has a private interest in the matter. Therefore, where a waterworks Act empowered a company to divert the water of a stream, without limit as to quantity by means of an open channel filled with loose stones, and they were diverting it by means of a culvert, it was held that the Liverpool Corporation (who supplied Liverpool with water under the Liverpool Corporation Waterworks Act, 1847, and who are entitled to the water of a stream into which the diverted stream had flowed) were not entitled to an injunction to restrain a violation of the terms of the Act as to the mode of diversion. In the course of his judgment, Lord Cranworth said (p. 86): “For the purposes of the present argument, we will assume that even within the limits of deviation they are bound to convey the water by an open watercourse, and not by a covered channel, *i.e.*, a tunnel or culvert. Still the question arises whether the acts of the defendants, departing in these respects from the strict parliamentary powers, are acts of which the plaintiffs have any right to complain, or demand the prevention, in the actual circumstances; for though we accede to the general observation that, persons obtaining from the legislature, by Acts of Parliament, like those now before us, powers to interfere with rights of property for their own purposes (whether of a local nature or merely private), are bound strictly to adhere to the powers so conceded to them, to do no more than the legislature has sanctioned, and to proceed only in

the mode which the legislature has pointed out, yet it does not follow that any one of Her Majesty's subjects has a right to complain whenever parliamentary powers of this nature have not been strictly followed or are intended to be transgressed. In such cases (we, of course, except any proceeding at the instance of the Attorney-General), a plaintiff, seeking the assistance of a court of equity, by way of injunction, is bound to show that he has an interest in preventing the defendants from doing what is in fact, or may well be called, a violation of their contract with the legislature. He must show not only that the defendants are committing or intend to commit a wrong, but also that the wrong complained of does occasion or will occasion loss or damage to him, that he has a special or private interest in confining the defendants within the limits of their parliamentary powers. Now, in this respect the Corporation of Liverpool appear to us to have failed. It is clear, from the 23rd section of the defendants' Act, that they may, at point H, divert the water of the stream and cause it, by a proper channel, to flow into their reservoir. The plaintiffs have no interest whatever in the lands through or over which the water may so be made to flow; and to them it must be a matter of indifference—of no importance in any sense—whether it is carried by a longer or shorter line, by an open channel or by a culvert, by a course convenient or inconvenient, to the defendants."

Where a local authority, having the right to supply water within certain limits, were about to supply water in bulk within those limits to a railway company for the purpose of being used by the railway company, within the limits of another local authority possessing power to supply water, injunction was granted in proceedings taken by the Attorney-General on relation. *Halifax Corporation, v. Morely Corporation*. (1894) 10 T. L. R. 454. Michael & Will's "Law relating to Water & Gas" pp. 87–88.

Common seal.—A corporation aggregate expresses its will, whenever strangers are concerned, by its common seal. The Municipal Act does not provide specifically in what cases common seal is to be used. Committees are empowered under S. 31 to make bye-laws as to purposes for which the seal shall be used. The general rule that a corporation acts by and under the common seal, has been subject to certain exceptions. See notes under S. 47.

Limitation of municipal powers and notice of the limitation.—As has been pointed out before, municipal committees are creatures of statute and authorities of enumerated powers. The powers are limited and circumscribed by the statute creating it and extend no further than is expressly stated therein and is necessarily and properly required for carrying

into effect the purposes of its incorporation. What the statute does not expressly or impliedly authorize is to be taken as prohibited. Persons dealing with a municipal committee are bound at their peril to take notice of the powers of the officers of the committee with whom they deal. All persons are presumed to know the nature and extent of the powers of the committees and they are also bound to see that the powers of the committee are not being exceeded by the officers with whom they deal and that statutory requirements have in full been complied with. Hulsbury's "Laws of England," Vol. 8, p. 361; Dillon, Vol. 2, p. 1157.

Presumption as to extent of powers.—Where a corporation is constituted by a statute all persons and corporations are presumed to know the nature and extent of its powers. 1923 Cal. 675 ; 37 C. L. J. 589 ; 75 L. C. 506.

Rights given by statute cannot be surrendered.—Rights conferred by Act of Parliament upon a company for public purposes cannot be restricted or rescinded by private agreement between the company and third parties. In *Thames Conservators v. Southwark and Vauxhall Water Co.* (1897), 13 T. L. R. 155, Mathew, J., held that an agreement whereby the water company limited and restricted their right to take water from the Thames to 24½ million gallons in 24 hours was lawful because it had been sanctioned by the legislature in subsequent legislation. Further, as to the general principle, see *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623, in which it was decided by the House of Lords that where the legislature confers powers on any body—whether one which is seeking to make a profit for shareholders or one acting solely for the public good—to take lands compulsorily for a particular purpose it is on the ground that the using of that land for that purpose will be for the public good; and a contract purporting to bind such a body, and their successors not to use those powers, is void. And in *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611, it was held that a railway company having the usual powers under their special Act to take and use land for the purpose of the railway and works, cannot—whether for valuable consideration or otherwise—alienate for any purpose except the purpose of the Act, any portion of its land not being "superfluous land" within S. 127 of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. C. 18), and not being land taken for extraordinary purposes within S. 45 of the Railways Clauses Consolidation Act, 1845 (8 and 9 Vict. C. 20), nor any easement over the same, e. g., a right of way. But there may be instances where the particular right of way over the lands of the company is not inconsistent with the purposes for which the lands were taken, and in such a case the company have power to

Section

Note.

grant it: (*In re Gonty and M. S. & L. Rail. Co.*, [1896] 2 Q. B. 439.)

A local authority, empowered to make bye-laws for the regulation of buildings within its jurisdiction, has no power to sanction plans in contravention of bye-laws properly made. *Yabbicom v. King*, (1899) 1 Q. B. 444.

Powers of corporation—Malice.—The power given to a local authority to do a certain act cannot be questioned in a civil court on the ground of its having been exercised through malice. 1926 All. 538 ; 48 All. 560.

Contracts in excess of corporate powers: “ultra vires” as a defence.—The general principle of law is settled beyond controversy, that the agents, officers, or even city council or governing body of a municipal corporation, *cannot bind the corporation* by any contract which is *beyond the scope of its powers*, or entirely *foreign* to the purposes of the corporation, or which (not being legislatively authorized) is against public policy. This doctrine grows out of the nature of such institutions and rests upon reasonable and solid grounds. The inhabitants are the corporators ; the officers are but the public agents of the corporation. The duties and powers of the officers or public agents of the corporation are prescribed by statute or charter, which all persons not only may know but are bound to know. The opposite doctrine would be fraught with such danger and accompanied with such abuse that it would soon end in the ruin of municipalities, or be legislatively overthrown. These considerations vindicate both the reasonableness and necessity of the rule that the corporation is bound only when its agents or officers, by whom it can alone act, if it acts at all, keep within the limits of the chartered authority of the corporation. The history of the workings of municipal bodies has demonstrated the salutary nature of this principle and that it is the part of true wisdom and of judicial duty to keep the corporate wings clipped down to the lawful standard. It results from this doctrine that contracts not authorized by the charter or by other legislative Act that is not within the scope of the powers of the corporation under any circumstances, are void, and in actions thereon the corporation may successfully interpose the plea of *ultra vires* setting up as a defence its own want of power under its charter or constituent statute to enter into the contract. the corporation may be estopped to avail itself of irregularities in the exercise of power conferred ; but it may always show that under no circumstances had the corporation *power* to make a contract of the character in question. The mere fact, however, that a city, in making a contract for a public improvement within its corporate powers, promises to make payment in negotiable

bonds, which it has no power to issue, does not make the entire contract *ultra vires*; and, therefore, if work be done under such contract the city will be liable therefor. Dillon, pp. 1178—1181.

Ratification of unauthorized contracts.—A municipal corporation *may ratify* the unauthorized acts and contracts of its agents or officers, which are within the scope of corporate powers, but not otherwise. Ratification may frequently be inferred from acquiescence after knowledge of all the material facts, or from acts inconsistent with any other supposition. The same principle is applicable to corporations as to individuals. But a subsequent ratification cannot make valid an unlawful act without the scope of corporate authority. An absolute excess of authority by the officers of a corporation in violation of law, cannot be upheld; and where the officers of such a body fail substantially to pursue the material requirements of a statutory enactment under which they are acting, the corporation is not bound. In such cases the statute must be strictly followed, and a person who deals with a municipal body is obliged to see that its charter has been fully complied with: when this is not done, no subsequent act of the corporation can make an *ultra vires* contract effective. Dillon, p. 1190.

Doctrine of estoppel.—Municipal committees are not estopped from pleading want of power or capacity. An act performed by a committee against the term of the statute cannot be ratified by any subsequent act. An act invalid for want of authority to do it cannot be validated by estoppel, otherwise all limitations on the powers of the committees may be ignored. Consequently a committee is not estopped by deed or otherwise from showing that it had no power to do what it purports to have done. The doctrine of *ultra vires* is applied with greater strictness to municipal committees than to private corporations. Municipal committees may always be restrained by injunction from doing an act which is beyond their powers.

Although the doctrines of estoppel and part performance apply to corporations, yet no sort of part performance or ratification can bind a corporation to a transaction which the legislature has forbidden it to undertake.

The university, a corporation, could not be held bound by representation made by any individual officer without the authority or sanction of the university.

All persons dealing with a statutory body like the university, or its agents, are deemed to have notice of the limits publicly set to their authority, and it is well accepted law that such a corporation is not bound by anything done by

such agents in its name when the transaction is on the face of it in excess of the powers defined by statute.

The applicant must be deemed to have known the conditions imposed upon the senate by the university regulations and to have accepted the office with knowledge of such limitations and he is not entitled to rely upon any estoppel on the part of the university in these proceedings such as would validate his appointment. 41 C. 518; 24 I. C. 404.

Perpetual succession. - A municipal board constituted under one Act does not cease to exist and it continues to be the same when a new Act comes into force. Therefore, the board has power under the new Act to sanction prosecution of a person in respect of an offence committed while the old Act was in force. 40 I. C. 700; 15 A. L. J. 530.

Jurisdiction of civil courts.—Civil courts are often called upon to test the legality of the committee's action. Courts have then to decide as to the extent of the powers vested in the committees. When there is no doubt as to the existence of the powers, the courts will not interfere with their operations when they are keeping within their authorization and acting *bona fide*. The courts will be competent to enquire into and control the action of municipal bodies when they have acted in excess or in contravention of the powers conferred upon them. 19 W. R. 309; 26 Cal. 811; P. R. 78 of 1901, 12 Bom. 490; 19 Bom. 187; 10 Bom. L. R. 821; 22 B. 230; 27 Bom. 221; 3 I. C. 516; 24 P. R. 1890 Cr.; P. R. 52 of 1900; 34 Cal. 30; 1905 A. W. N. 79; 2 Mad. 37; 17 C. W. N. 812; 35 Cal. 859; 37 Cal. 371; 40 Cal. 836.

These decisions show that the jurisdiction of the civil courts is limited to the determination of the question as to whether the act complained of was *ultra vires*. It is not open to the courts to go into the question of propriety or necessity of the act complained of when the legislature has designedly made the corporation the sole judge of such propriety or necessity. The courts cannot substitute their own judgment for that of the committees. Matters, which are within the absolute discretion of the committees, cannot be interfered with on the ground that the discretion has not been rightly exercised. The matter would, of course, assume a different aspect if the *bona fide* of the act itself is questioned, or malice is imputed to the committees. Courts will, however, be slow to impute bad faith to committees. 26 Cal. 811.

Under S. 21 of the Madras District Municipalities Act a municipal council is a corporation with power to contract and to do all things necessary for the purpose of its constitution, the municipal fund being held by it under S. 27 for the

purposes of the Act. If the council keeps within its authorization and acts *bona fide*, the court will not interfere with its operations. It will be deemed the best judge, not only of what is most conducive to its own interest, but also of what is proper and fitting as regards third parties, and it will be left unchecked to take or not to take lands for promoting sanitation, etc. The corporation is, however, protected only if it acts *bona fide*. 48 I. C. 128; 23 C. W. N. 658.

Where a public body has a discretion which it exercises *bona fide*, the court in an application for mandamus would not constitute itself an appellate authority and go into nice question as to the soundness or otherwise of the exercise of the discretion by the public body complained against. The case is, however, different where a public body erroneously assumes that it has a discretion which it does not possess in law and then seeks to defend an application for mandamus on the ground that it has exercised a discretion which courts ought not to review. 38 I. C. 848.

In the case of statutory bodies if a particular act must by statute be done at a particular kind of meeting convened in a particular way, no meeting can do that act which is not a meeting of that particular kind or has not been convened in that particular way. The members of the body must have notice of what it is proposed to do at the meeting, or the proceedings will be invalid. Ordinarily it is sufficient if the members have notice of what is proposed, unless the statute in terms enacts that the notice must not only give the substance of what is proposed, but must call it by its statutory name. 38 I. C. 848.

Purposes of constitution.—The purposes of a corporation under this Act are enumerated in S. 52.

Suits.—A corporation must sue and be sued in its corporate name, and not in the name of its chairman or secretary. A. W. N. (1908) 165.

A suit brought against a municipal committee in the name of the wrong officer cannot by the subsequent substitution of the proper officer as defendant be deemed with reference to S. 22 of the Limitation Act to have been instituted against such committee when such substitution is made. 2 All. 296.

Where instead of suing the taluk board in its corporate capacity as required by S. 27 of the Madras Local Boards Act, the president of the board was impleaded as defendant, and the mistake, even after being pointed out, was persisted in by the plaintiff: *Held* that this was not a mere error of

form and the suit was dismissed. 16 Mad. 296 & 1924 Mad. 309.

Suit by municipal board with the name of chairman added.—Where objection was taken in appeal that the chairman of the municipal board appeared as a plaintiff in the body of the plaint and was mentioned by his name: *Held*, that as he was clearly described therein as a chairman of the municipal board, there can be no doubt that the plaint was presented with the intention of shewing that it was a municipal board which was suing. At the worst it was a case where a suit had been instituted in the name of a wrong person as a plaintiff and the error could be corrected under the provisions of Rule 10 of Order I and the defect was not one of substance but merely of form and under S. 99 of the Code of Civil Procedure such defects cannot be made a ground of any interference with the decree which the court below may have passed in such a case. 1924 Oudh 309; 84 I. C. 532.

The school board created under S. 3, Bombay Primary Education Act, is a creature of the legislature, and has a separate and independent existence, apart from the district local board. It is not a committee of the district local board or a branch of the parent body. Such a school board is a corporation and as such is liable to be sued.

A decision in a former suit obtained against the municipal council is binding on its chairman who is the chief functionary of the council. For the purpose of applying the principle of *res judicata* the municipal council and its chairman cannot be viewed as two independent entities. 1933 Mad. 59.

Malicious prosecution.—A suit for damages will lie against a municipal committee for malicious prosecution. P. R. 86 of 1906; 1932 Bomb. 259.

Servants not responsible for malicious prosecution.—Where a criminal prosecution of a person is instituted after a resolution by the municipality to that effect, the servants of the municipality cannot be held responsible for it. 1932 Bom. 259; 56 B. 135.

In an action for malicious prosecution even against a municipality the cause of action arises when the plaintiff is acquitted and not when the prosecution is launched by the municipality against the plaintiff.

Corporation must keep strictly within its powers—A statutory body like a municipality acting under a statute must keep strictly within its statutory powers. It is the duty of a municipality which is issuing orders which interfere with the

right of an owner to repair or alter his own house on his own property in the manner which is most convenient to himself, to be careful that their orders are based on the provisions of the statute applicable to the particular case in question.

Criminal prosecution.—A municipal corporation is not a public servant within the meaning of S. 39 of Act IV of 1877 and may, therefore, be prosecuted under the Penal Code without preliminary sanction of the Government required by that section. It was, however, conceded in this case that it could be a public servant under clause 10 of S. 21, Indian Penal Code but that clause speaks of an officer and not a person and an officer cannot be juridical person such as a corporation must necessarily be. S. 21 of the Indian Penal Code does not appear to contemplate the possibility of including artificial persons within its comprehension. 3 Cal. 758.

Criminal liability of corporation.—If, under the general principles of criminal law, *mens rea* is necessary for an offence, a municipal corporation (A person is defined in S. 11 of the Penal Code as including any company or association or body of persons, whether incorporated or not) would not be criminally liable.

Accordingly, a municipal corporation cannot be guilty of treason, felony, corruption, perjury or other similar offences. But a corporation may be indicted for libel or nuisance.

And where a duty is imposed by statute in such a way that breach of the duty amounts to a disobedience of the law, then, if there is nothing in the statute either expressly or impliedly to the contrary, a breach of the statute is an offence for which a corporation may be indicted, whether the statute refers in terms to corporation or not. This is so whether the breach of duty is non-feasance or misfeasance.

A corporation cannot be imprisoned, if imprisonment be the sentence for the crime; a corporation cannot be hanged, or put to death, if that be the punishment for the crime; _____ and so in those senses, a corporation cannot commit a crime. But a corporation may be fined, and a corporation may pay damages; and therefore I must totally dissent _____ that a body corporate or a corporation that incorporated itself for the purpose of publishing a newspaper could not be tried and fined.

A corporation cannot be indicted for an offence which is punishable with death or imprisonment, for the simple reason that it cannot die or be imprisoned. But a corpora-

tion may be fined in cases where it can be indicted for an offence which is punishable with fine and in these cases no question of *mens rea* arises.

Though the corporation itself may not be liable, the persons actually implicated in the crime, whether they be members or merely agents of the corporation, can be indicted and punished. See Aiyangar's Law of Municipal Corporation, pp. 216—220.

Power to acquire and hold property, and statutes of mortmain.—The Roman jurisprudence seems originally to have denied to cities a capacity to inherit, or even to take by donation or legacy. They were treated as composed of uncertain persons, who could not perform acts of volition and personality involved in the acceptance of a succession. The disability was removed by the Emperor Adrian in regard to donations and legacies, and soon legacies *ad ornatum civitatis* and *ad honorem civitatis* became frequent. Legacies for the relief of the poor, aged, and helpless, and for the education of children, were ranked of the latter class. The capacity was enlarged by the Christian emperors, and after the time of Justinian there was no impediment. Donations for charitable uses were then favoured ; and this favourable legislation was diffused over Europe by the canon law, so that it became the common law of Christendom.

When the power of the clergy began to arouse the jealousy of the temporal authority, and it became a policy to check their influence and wealth, they being, for the most part, the managers of the property thus appropriated, limitations upon the capacity of donors to make such gifts were first imposed. These commenced in England in the time of Henry III ; but the learned authors of the history of the corporations of that realm affirm that cities were not included in them, "perhaps on the ground that the grants were for public good ;" and although "the same effect was produced by the grant in perpetuity to the inhabitants, the same practical inconvenience did not arise from it, nor was it at the time considered a mortmain. A century later there was a direct inhibition upon grants to cities, boroughs, and others, which have perpetual commonalty," and others, "which have offices perpetual," and therefore "be as perpetual as people of religion." The English statutes of mortmain forfeit to the king or superior lord the estates granted, which right is to be exerted by entry ; a license, therefore, from the king severs the forfeiture. The legal history of the continent on this subject does not materially vary from that of England. The same alternations of favour, encouragement, jealousy, restraint, and prohibition are discernible.

This legislation of Europe was directed to check the wealth and influence of juridical persons who had existed for centuries there, some of whom had outlived the necessities which had led to their organization and endowment. Dillon, pp. 1554-1555.

In India legislature is the source of power in respect of the proprietary rights of the corporations. The Act grants the power to hold property and fixes its limits. The terms of the grant determine the nature, extent and limitation of the power.

"The inference from the statute creating corporations and authorising them to hold real estate to a certain limited extent is, that our statute corporations cannot take and hold real estate for purposes foreign to their institution. Not only so, but if the charter is silent on the subject the further inference is, we think, that they can only take and hold such property as a means of carrying out or accomplishing the declared and specified purposes and objects of the corporation. In an important case in Louisiana it was decided that a purchase of real estate by the corporation defendant for \$ 247,000, payable in bonds at twenty-five years from date, for the purpose of platting and re-selling the same, and thereby improving the salubrity of the city, promoting the convenience of the citizens as to streets, was legal. If the court was right in holding that the charter and laws authorised the purchase of real estate without restriction, which we strongly doubt, the case shows the wisdom of the usual limitations in charters disabling such corporations from acquiring, by purchase, real estate for other than corporate purposes." Dillon, pp. 1560-1562.

Suits by and against corporations—See C. P. C., 1st Schedule, Order XXIX.

Delegation of powers.—The municipal committee cannot delegate the power of deciding whether a suit should be instituted or not. Any suit or appeal instituted by the secretary or any other officer under such delegated power is incompetent and is liable to be dismissed even if such institution is subsequently ratified 1932 Lah. 388; 33 P. L. R. 956, 137 I. C. 253.

Government not a necessary party.—In disputes between municipal committee and private persons regarding streets Government is not a necessary party. 1923 Bombay 456 and 459; 47 B. 306; 47 B. 315.

19. Every officer or servant employed by the committee, whether for the whole or part of his time, and every member of the committee shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

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Notes.

The above section has been substituted by the Amendment Act, II of 1923. These provisions now confer all the privileges of a public servant on municipal employees and members.

Analogous Law:—

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| S. 540 of Bengal Municipal Act, XV of 1932. | S. 405 of Madras City Municipal Act, 1919. |
| S. 56 of Bombay Municipal Boroughs Act, 1925. | S. 358 of Madras District Municipal Act, V of 1920. |
| S. 521 of Bombay City Municipal Act, III of 1888. | S. 237 of Rangoon City Municipal Act, 1922. |
| Ss. 16 & 44 of Burma Act, III of 1898. | S. 84 of United Provinces Municipalities Act, 1916. |
| S. 554 of Calcutta City Municipal Act, III of 1923. | S. 19-C., Punjab District Board Act, 1883. |

Section 197, Cr. P. Code.—Prosecution of a member requires Government sanction under S. 197, Criminal Procedure Code. 1929 Mad. 8.

The privilege of immunity from prosecution without sanction only extends to acts which can be shown to be in discharge of official duty or fairly purporting to be in such discharge. An offence arising out of abuse of official position by an act not purporting to be official does not necessitate sanction under S. 197, Criminal Procedure Code. A president of the municipal council was charged with an offence of threatening a voter with injury to his property with intent to induce such voter to vote for any candidate or to abstain from voting: *Held* that no sanction was necessary. It cannot be held that threatening the voter with injury could be committed by a public servant only, or such an offence involves as one of the elements that it was committed by the chairman of a municipality. 1927 Mad. 566; 50 Mad. 754.

Prosecution of chairman of a municipality.—Although the chairman of a municipality is a public servant but when the offences alleged against him were not committed by him in the discharge of his official duties, no sanction of the Government under S. 197 (1) is necessary for prosecuting him. 1928 Mad. 1158; 113 I. C. 625.

Cr. P. Code, Section 200.—Any municipal officer is a public servant and apart altogether from any express provisions, a complaint for demolition of structure made by a buildings-surveyor of the corporation is a complaint by a public servant in the discharge of his official duty and he need not be examined as to the complaint when lodging it. 1930 Cal. 222; and 1930 Cal. 665.

Tax collector is a public servant within the meaning of S. 21, Cl. 10 (I. P. C.). Sanction under S. 195, Cr. P. C., is not required when the public servant concerned is himself the complainant. 1922 Lah. 532.

Summary trial of public servant.—Municipal servant is a public servant under S. 19 and his position is analogous to that of a Government servant. Summary trial of such a servant is most inappropriate. 1932 Lah. 188, 135 I. C. 220; 33 P. L. R. 177.

Municipal committee not public servants.—Though officers and servants are public servants, the committee itself is not a public servant and no sanction of Government is necessary to prosecute a municipal committee: 3 Cal. 758. In the absence of such a provision as S. 19 certain servants were held to be public servants within the meaning of Indian Penal Code. See 33 Bom. 213; 1 Pat. 423.

President and Vice-President.

20 (1) Every committee shall from time to time elect one of its members to be president, and the member so elected shall if approved by the local Government in the case of a first class committee, or by a Commissioner in the case of a second class committee, become president of the committee:

Election or appointment of president and vice-president.

Provided that the committee, instead of electing a president and submitting his name for approval to the local Government or the Commissioner, may apply to the local Government or the Commissioner as the case may be, to appoint a president from among its members, and that the local Government may, by notification exclude any committee from the operation of this sub-section; and that in either of these cases, or if no election has been made within one month from the occurrence of a vacancy in the office of president, or if the person elected be not approved, the local Government or the Commissioner, as the case may be, may, if it or he shall think fit, appoint one of the members of the committee to be president.

(2) Every committee may also, from time to time, elect one or two of its members to be vice-president or vice-presidents and when two vice-presidents are elected on the same date, shall declare which of them shall be deemed to be the senior.

(3) Every member elected or appointed under this section to be president or vice-president may be elected or appointed by office if he was appointed by a member of the committee in the same way.

Notes.

S. 15 except Cl. 4 of the old Act. Clause 4 has been incorporated in other sections.

Analogous Law:—

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| <p>Ss. 45 & 46, Bengal Municipal Act, XV of 1932.</p> <p>Ss. 23 & 25, Bengal District Municipal Act, 1884.</p> <p>Ss. 20—23, Behar and Orissa Municipal Act, 1922.</p> <p>Ss. 18 & 28, Bombay Municipal Boroughs Act, 1925.</p> <p>S. 23, Bombay District Municipal Act, III of 1901.</p> <p>S. 37, Bombay City Municipal Act, III of 1888.</p> <p>S. 17, Burma Municipal Act, III of 1898.</p> | <p>S. 10, Calcutta City Municipal Act, III of 1923.</p> <p>S. 20, Cantonment Act, II of 1924.</p> <p>S. 18, Central Provinces Municipal Act, II of 1922.</p> <p>S. 28, Madras City Municipal Act, 1919.</p> <p>S. 13 (3) Madras District Municipal Act, V of 1920.</p> <p>S. 17, Rangoon City Municipal Act, 1922</p> <p>Ss. 43, 44, & 54, United Provinces Municipalities Act, 1916.</p> <p>Ss. 18 & 19, Punjab District Board Act, 1883.</p> |
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Election.—Government has prescribed rules under S. 240 of the Act for election of presidents and vice-presidents. These rules have to be strictly followed.

Election by members who have not taken oath of allegiance.—Election of president by such persons is invalid. 1924 Mad. 515; 75 I. C. 620.

Election of President—When an election was challenged on the ground that the notice calling the meeting for election was defective as it did not give full time prescribed by rules: it was held that an election is not invalidated by the non-observance of the regulation for the conduct of elections, unless the non-observance was of a character contrary to the principles of the Act, under which the regulations are framed, or might have effected the result of the election. 1930 Oudh 434, 128 I. C. 732.

Chairman of a meeting to elect a vice-president.—At a meeting convened for the purpose of electing a vice-president on the occurrence of a casual vacancy in the absence of any rule to the contrary the duly elected president of the committee has the statutory right to preside under S. 33.* 1931 Nag. 175; 134 I. C. 861.

Municipal committee presided over by a person not duly elected president.—A municipal committee presided over by a person who is not its president as required by this section

*Cf. S. 28 of Punjab Municipal Act.

is not a validly constituted committee. P. R. No. 46 of 1905 Cr.

21. (1) If a president is appointed by the local Government by virtue of his office, the person for the time being holding the office shall be president until the local Government shall otherwise direct.

Term of office of president and vice-president.

(2) The term of office of a president elected or appointed by name or elected by virtue of his office shall be three years or the residue of his term of his office as member, whichever is less.

(3) The term of office of a vice-president shall be such term as the committee may by bye-law fix.

(4) An outgoing president or vice-president shall, if otherwise qualified, be again eligible for election or appointment.

Notes.

Ss. 15 (4) and 16 of the old Act.

Analogous Law.—Cf. Ss. 24 and 25 of Bengal Act, III of 1884; S. 56 of Bengal Municipal Act, XV of 1932; S. 18 of Central Provinces Act, 1922; S. 23 (7) of Bombay Act, III of 1901; S. 21 of Cantonment Act, 1924; S. 19 of Bombay Municipal Boroughs Act, 1925; Ss. 46, 45 and 56 of United Provinces Act, II of 1916; S. 18, Burma Act III of 1898; Ss. 29 and 30 of Madras City Act, 1919; S. 13 (5) Madras District Municipal Act, 1920; S. 29 of Bihar and Orissa Act, VII of 1922.

22. Whenever a president or vice-president vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any president or vice-president may be removed from office by the local Government in pursuance of a resolution to that effect passed by two-thirds of the members of the committee.

Resignation of president and vice-president.

Notes.

S. 16 (2) of the old Act.

Analogous Law:—

S. 26-A, Bengal District Municipal Act, 1884.
Ss. 60 & 61, Bengal Municipal Act, XV of 1932.
Ss. 23, 33 & 34, Behar and Orissa Municipal Act, 1922.
Ss. 20 & 21, Bombay Municipal Boroughs Act, 1925,
S. 15-A & 23 (7), Bombay District Municipal Act, III of 1901.

S. 18, Burma Municipal Act, III of 1898.
Ss. 21 & 22, Central Provinces Municipal Act, II of 1922.
S. 40, Madras District Municipal Act, V of 1920.
Ss. 47, 48 & 54 (e), United Provinces Municipalities Act, 1916.

Resignation of president.—Where the resignation requires a notice to the committee before such resignation is accepted the mere fact that the president sends individual notice to members informing them of his resignation the resignation will not take effect. A local board being a body corporate is other than and much more than some of its individual members. Its business therefore can only be transacted at its duly constituted meeting. Giving notice of resignation is one such business of the board, and can be transacted by a meeting of the board. By circulating the notice of resignation to each member and upon its receipt by each member the resignation does not take effect although acceptance of resignation is not necessary under S. 22, where a president of a local board issued a notice of his resignation to each member and its receipt was acknowledged by them: *Held* that there is no proper notice of his resignation and that therefore resignation does not take effect in spite of the fact that the Government was of opinion that the resignation took effect. *Cf.* 1929 Mad. 8; 52 Mad. 441.

Casual vacancies in office of president or vice-president

23. Upon the occurrence of any vacancy in the office of president or vice-president a new president or vice-president shall be elected or appointed in manner provided by S. 20.

Notes.

S. 17 (1) of old Act.

Analogous Law:—

- S. 27, Bengal Municipal Act, 1884.
- S. 45, Bengal Municipal Act, XV of 1932.
- S. 23, Bombay Municipal Boroughs Act, 1925
- S. 23 (8), Bombay District Municipal Act, III of 1901.
- S. 37 (3), Bombay City Municipal

- pal Act, III of 1888.
- S. 19, Burma Municipal Act, III of 1898.
- S. 19, Central Provinces Municipal Act, II of 1922.
- S. 13 (5), Madras District Municipal Act, V of 1920.
- S. 17 (3), Rangoon City Municipal Act, 1922.

Notification of elections, appointments and vacancies.

24. (1) Every election and appointment of a member or president of a committee shall be notified, in the case of a municipality of the first class, by the local Government, and in the case of a municipality of the second class, by the Commissioner of the division, and no member shall enter upon his duties until his election or appointment has been so notified and until, notwithstanding anything contained in the Indian Oaths Act, 1873, he has taken or made, at a meeting of the committee, an oath or affirmation of his allegiance to the Crown, in the following form, namely:—

' I. A. B., having been elected (or appointed) a member of the municipal committee of _____ do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.'

(2) If any such person omits or refuses to take or make the oath or affirmation as required by sub-section (1) within three months of the date of the notification of his election or appointment, his election or appointment as the case may be, shall be deemed to be invalid unless the local Government for any reason which it may consider sufficient extends the period within which such oath or affirmation may be taken or made.

(3) If an election is deemed to be invalid under the provisions of sub-section (2) a fresh election shall be held; and if an appointment is deemed to be invalid under the provisions of sub-section (2) the local Government shall appoint another person:

Provided that the local Government or, in the case of any municipality of the second class the Commissioner, with the previous sanction of the local Government, may refuse to notify the election as member of any person who could be removed from office by the local Government under any of the provisions of Section 16, or of any person whom the local Government for any reason which it may deem to affect the public interests may consider to be unfitted to be a member of the committee and, upon such refusal, the election of such person shall be void.

Notes.

S. 18 of the old Act.

Recent changes.—S. 12-A, introduced by Act, II of 1923 has now been incorporated in the 1st clause of S. 24, which has been amended by S. 10 of Act, III of 1933.

Analogous Law.—S. 17 of Bombay Municipal Boroughs Act, 1925; Ss. 20 and 23 (b) of Bombay District Municipal Act; S. 10 of Bombay City Municipal Act; S. 21 of Burma Municipal Act 1898; S. 20 of Central Provinces Act, II of 1922; S. 27 of Madras District Municipal Act, V of 1920; S. 56, United Provinces Municipal Act, 1916; S. 18, Cantonment Act, 1924.

Suit questioning the legality of nomination—Government necessary party.—Where in a suit the nomination of certain members of the committee is questioned as illegal and a suit is brought against the nominated members for injunction restraining them from sitting in the committee and working therein and for declaration that the nomination is illegal,

Government is a necessary party. Cf. 48 Bom. 43; 77 I. C. 241, 1924 Bom. 65.

Government's refusal to notify—Addition of Government as a party in a case disputing the election.—Even against the plaintiff's consent a new party may be impleaded as a defendant and he may be so added though he may thereby be in a position to counter-claim against the plaintiff.

After the meeting of a board convened for the purposes of electing a member for the district board was adjourned by majority, the minority continued their meeting and treating the adjournment as illegal elected plaintiff as such member. But the Government withheld the notification of plaintiff's election in the Government Gazette. The plaintiff then sued the district board and its president for declaration that he was the duly elected member. The Government applied for being joined as a defendant to the suit. But plaintiff and defendant opposed its application: *Held* that inasmuch as the Government is given power of control over the local board and to suspend execution of any resolution under S. 232, the Government was a proper party to the suit and should be added as a defendant. Cf. 1929 Mad. 443, 118 I. C. 780.

Conduct of business.

Times for
holding meet-
ings

25. (1) Every committee shall meet for the transaction of business at least once in every month at such time as may, from time to time, be fixed by the bye-laws.

(2) The president or, in his absence or during the vacancy of his office a vice-president, may, whenever he thinks fit, and shall, on a requisition made in writing by not less than one-fifth of the members of the committee, convene either an ordinary or a special meeting at any other time.

Notes.

S. 19 of the old Act.

Recent changes.—The words in italics were inserted by S. 11 of Act, III of 1933.

During the last election in Lahore, the notification of the appointment of the president was delayed for considerable time and no meeting was called because the elected president was of opinion that he could not be considered a president without notification and the vice-president could not call the meeting as the question of the absence of the president could only arise if there was a president. For certain reasons the secretary did not call the meeting as required by the bye-laws as he thought he could not do so without the

permission of the president which office did not exist. The amendment will meet such difficulties and when the appointment is not notified the office must be taken to be vacant and the vice-president will be entitled to call a meeting. Difficulties may still arise if there is no vice-president.

Analogous Law:—

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| S. 38, Bengal District Municipal Act, 1884. | S. 58, Calcutta City Municipal Act, III of 1923. |
| Ss. 77 & 78, Bengal Municipal Act, XV of 1932. | Ss. 22 and 37, Cantonment Act, II of 1924. |
| Ss. 43 & 44, Behar and Orissa Municipal Act, 1922. | S. 31, Central Provinces Municipal Act, II of 1922. |
| S. 35, Bombay Municipal Boroughs Act, 1925. | S. of Madras District Municipal Act, V of 1920. |
| S. 26 (1) and (2), Bombay District Municipal Act, III of 1901. | S. 18 (1), Rangoon City Municipal Act, 1922. |
| S. 36 (d), Bombay City Municipal Act, III of 1888. | S. 86, United Provinces Municipalities Act, 1916. |
| Ss. 22 and 37, Burma Municipal Act, III of 1898. | S. 22, Municipal Corporation Act, 1882. |

English Law:—

- S. 199, Public Health Act, 1875.

Conduct of business.—Ss. 25 to 30 lay down the important and general rules governing conduct of business by municipal committees, the remaining rules are left to be framed by each municipal committee under S. 31 according to the different requirements of each committee.

A municipal committee can transact municipal business only at a municipal meeting duly convened for the purpose. The members cannot make a valid determination binding on the committee by their assent separately and individually expressed. To make a meeting there must be at least two persons: *Sharp v. Dawes*, 2 Q. B. D. 26. Members of municipal committees have no right by common law to be represented or vote by proxy at meetings thereof.

See notes under S. 31.

At least.—The use of the words “at least” implies that there may be more than one meeting in a month. Cf. 1930 Oudh 434.

At any other time.—The use of the words “at any other time” in sub-section 2 means that the meeting sanctioned by the sub-clause may be held in any month and at any time other than the time fixed for the meeting prescribed by sub-section (1). In other words a meeting under sub-section (2) could properly be held at any hour of the day previous or subsequent to the hour of the monthly meeting. Cf. 1930 Oudh 434. /

Section 25 (2).—When a meeting was not called by the president as required by the provisions of S. 25 (2) the meeting was held to be not properly convened and the defect could not be cured by S. 37. An adjourned meeting is a continuation of the original meeting and if the original meeting is defective, the adjourned meeting will be equally defective. *Cf.* 28 Bom. 66.

Election of president.—Where the first meeting was adjourned, *sine die*, a further meeting was necessary to avoid a deadlock, and a second meeting was convened: there is nothing in the Act, as it then stood, to show that the meeting as convened is illegal in any sense.

It may be mentioned that most of the members of the municipality were present at the meeting, and no objection was taken as to the validity of the meeting thus convened.

Under S. 37 the proceedings of a municipality are not vitiated by reason of any disqualification of the chairman in acting as the president or presiding authority of the General Meeting after the President is elected. It covers the case of an irregularity, if any, in continuing the chairman as the chairman of the General Meeting after the president is elected. *Cf.* 1926 Bom. 576, 98 I. C. 454.

Meeting.—A meeting may be defined as the coming together of two or more persons from opposite directions into one place or into the presence of each other for the transaction of business. In fact and in law the meeting implies coming together of at least two persons. One person cannot ordinarily constitute a meeting: *Sharp v. Dawes* (1876) 2 Q. B. D. 26.

Requisites of a valid meeting: —

- (1) It must be properly convened, *i. e.*, a proper notice must be sent to every member by the proper summoning authority as laid down in S. 25 and business rules.
- (2) It must be properly constituted. To constitute a meeting of the municipal committee it is essential (a) that the properly appointed person is in the chair—the chairman is necessarily an integral part of a meeting—and (b) that a quorum is present.
- (3) It must be properly held in accordance with the rules governing it as provided by the Municipal Act or by its business rules.

But a corporate meeting may be valid where notice of it has not been given, provided all the members of the corporation are present and consent to the meeting being held: *Musgrave v. Nevinson*, Mayor of Appleby (1723, 2 Ld. Raym. 1358). See, however, Second Schedule, Rule 5 to the Municipal Corporation Act of 1882, which provides for notice of meetings of municipal corporations. In this case it was held that the election of an alderman in a corporation upon a casual meeting of the electors is void unless all the electors concur in it. In *Re Express Engineering Works, Ltd.* (1920, 1 Ch. 466), a meeting which was convened and held only as a *directors'* meeting, in fact transacted business which could not be done at a meeting convened and held as a *shareholders'* meeting; but as all the directors present constituted the whole body of the shareholders, it was held that the business was validly transacted.

26. (1) Every meeting of a committee shall be either ordinary or special.

Ordinary
and special
meetings

(2) Any business may be transacted at any ordinary meeting unless required by this Act or the rules to be transacted at a special meeting.

(3) When a special and an ordinary meeting are called for the same day, the special meeting shall be held as soon as the necessary quorum is present.

Notes.

S. 20 of the old Act.

Recent changes.—Cl. (3) has been added by S. 12 of the Punjab Amendment Act, III of 1933. Special meeting being a very important meeting it has been given a statutory precedence over ordinary meeting to be called on the same day. As soon as the quorum requisite for a special meeting is present, ordinary meeting should be postponed to special meeting though owing to absence of requisite quorum for special meeting the ordinary meeting may have been started before the special meeting.

Bye-laws can only be passed at a special meeting [S. 3 (3)]. Business under the following sections must be transacted only at a special meeting:—Ss. 3 (18) (b), 22, 38 (1), 62 (1) (3) & 70 (2).

Application for extension of Vaccination Act must be by a resolution passed at a special meeting.

Analogous Law:—

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| S. 39, Bengal District Municipal Act, 1884. | S. 38, Cantonment Act, II of 1924. |
| S. 26, Bombay District Municipal Act, III of 1901. | S. 30, Central Provinces Municipal Act, II of 1922. |
| S. 23, Burma Municipal Act, III of 1898. | S. 87, United Provinces Municipalities Act, 1916. |

Quorum

27. (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the committee actually serving at the time, but shall not be less than three.

(2) The quorum necessary for the transaction of business at an ordinary meeting of a committee shall be such number or proportion of the members of the committee as may, from time to time, be fixed by the bye-laws, but shall not be less than three :

Provided that, if at any ordinary or special meeting of a committee a quorum is not present the chairman shall adjourn the meeting to such other day as he may think fit and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, and transacted at, the adjourned meeting whether there be a quorum present thereat or not.

Notes.

S. 21 of the old Act.

Analogous Law:—

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| S. 42, Bengal District Municipal Act, 1884. | S. 24, Burma Municipal Act, III of 1898. |
| S. 82, Bengal Municipal Act, XV of 1932. | S. 63, Calcutta City Municipal Act, III of 1923. |
| S. 35 (7), Bombay Municipal Boroughs Act, 1925. | S. 39, Cantonment Act, II of 1924. |
| S. 26 (7), Bombay District Municipal Act, III of 1901. | S. 32, Central Provinces Municipal Act, II of 1922. |
| S. 36 (f), Bombay City Municipal Act, III of 1888. | S. 18 (2), Rangoon City Municipal Act, 1922. |
| | S. 88, United Provinces Municipalities Act, 1916. |

Actually serving at the time.—This will exclude the casual vacancies from counting. To constitute quorum for a special meeting the quorum required is not one-half of the number of the members fixed for a committee under S. 11 but one-half of the members actually serving at the time. If a casual vacancy has occurred by death or removal or acceptance of resignation the casual vacancy thus caused will not be counted unless a new member has been elected or nominated to fill the vacancy.

Clause (2).—The committees are empowered under S. 31 (c) to make bye-laws as to quorum necessary for transaction of business. It may consist of a specified number of members or a specified proportion of the members. The quorum cannot be less than three. Any business transacted at a meeting where quorum is not present is altogether invalid. Where a member on account of personal interest is disqualified to take part in the proceedings under S. 48 his presence should not be counted and there should be a quorum excluding such interested person. *Cf. Nicol v. Magistrate of Aberdeen, (1870), 9 M. 306.* The actual presence of the quorum in the meeting is sufficient although some members refuse to vote.

Adjournment.—This may arise in one of the following four ways:—

1. From failure to make a meeting, *i. e.*, quorum of members not present. This is strictly speaking a postponement. A meeting cannot be adjourned if there was in fact no meeting. Sometimes standing orders or rules under S. 31 may provide for the persons assembled to wait for a certain time for a quorum.

2. From failure to keep a meeting or a count out. If during the sitting of the committee it is brought to the notice of the chairman that the requisite number of members necessary for the quorum is not present then the chairman after counting the members present shall adjourn the meeting if he finds the number present is less than the quorum.

3. From motion for adjournment. A motion for the adjournment of the meeting or of the debate on a particular matter may be proposed by any person who has not already spoken, at any reasonable time in the course of the meeting, if no person is speaking at the time. It need not be in writing. If no one seconds the motion it falls to the ground. If it is seconded and put to the meeting, it then becomes a distinct question upon which, in the absence of special rule to the contrary, any person may speak whether such person has already spoken or not. But the mover has no right to reply. On the acceptance of the motion the meeting or the debate is adjourned.

4. From the action of the chairman. The chairman has not at common law a power to adjourn against the wishes of the meeting. Ordinarily the right to adjourn is in the meeting itself.

“ In *Stoughton v. Reynolds** Lord Hardwicke said:

“ The right is in the assembly itself; for if they be an assembly, all consisting of equals, and there be no custom or rule of law to direct the adjournment the right must be in the persons which constitute the assembly.’

“ Referring to this decision in the subsequent case of *Wilson v. McMath*,† Sir John Nicholl pointed out that it decided ‘ that the question of adjournment should have been decided, as it generally is, by vote and not by the chairman.’

“ If the chairman adjourns the meeting contrary to the wishes of the members and thereby interrupts business, the members can lawfully, in the absence of their proper chairman, elect another to act as his substitute and continue the business. The point was forcibly stated by Chitty, J., in *National Dwellings Society v. Sykes*‡:

“ But, in my opinion, the power which has been contended for is not within the scope of the authority of the chairman—namely, to stop the meeting at his own will and pleasure. The meeting is called for the particular purposes of the company. According to the constitution of the company a certain officer has to preside. He presides with reference to the business which is then to be transacted. In my opinion, he cannot say, after that business has been opened, “ I will have no more to do with it; I will not let this meeting proceed; I will stop it; I declare the meeting dissolved and I leave the chair.” In my opinion, that is not within his power. The meeting by itself can resolve to go on with the business which the other chairman forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like.’§

“ When the business for which the meeting was assembled has been completed the chairman can lawfully adjourn the meeting. In the case of *R. v. Gaborian* || Le Blanc, J., said:

“ Here the business which began under the mayor had been ended; for the mayor as presiding officer had decided that the votes being equal no election could be had and no objection was made to that decision; and then he directed proclamation to be made for dissolving the assembly; and no objection was made to that, nor any notice given by any persons that they meant to proceed in making an election.

* 2 Stra. 1045

† 3 Phil. 83.

‡ [1894] 3 Ch. 159.

§ See also *Show v. Thomson*, 3 Ch. D. 223.

|| (1809) 11 East 77.

Then when the mayor was gone away and a number of the burgesses also departed considering the assembly as dissolved, and the rest proceeded to make an election: this was not a continuation of the business begun before the mayor but an attempt to continue that which had been concluded."

See Blackwell's "Public and Company Meetings," (7th edition), pp. 57—59.

S. 27 proviso deals with the first case of adjournment while the other cases are left to rules under S. 31.

The Quorum.—A quorum (L., literally, of whom) from the wording of commissions in which certain persons were specially designated as members of a body, by the words *quorum vos . . . unum* (*duos*, &c.), *esse volumus* "of whom we will that you be one" (two, &c.) is a fixed number of members of any body or society whose presence is necessary for the proper or valid transaction of business. (Murray).

The acts of a corporation are those of the major part of the corporators, corporately assembled, *i.e.*, in the absence of statutory provisions or special custom, the major part must be present at the meeting, and of that major part there must be a majority in favour of the business transacted.

Quorum not prescribed.—Where no quorum is prescribed either by the statute creating it or by the rules framed thereunder there is no reason why ordinary common law rule prevailing in England should not apply. The rule of common law provides that when a statute grants power on any definite number of persons in respect of a public as opposed to a private trust and contains no indications to the contrary it is necessary that a majority of that number should act together and should attend every meeting when any corporate act is done or purported to be done. The election of a chairman and vice-chairman of a school board is a corporate act. *Cf.* 1928 Sindh 126, 107 I. C. 456 & 38 I. C. 528.

Whenever a certain number are incorporated, a major part may do any corporate act; so if all are summoned and part appear, a major part of those that appear may do a corporate act : *Attorney-General v. Davy* (1741, 2 Atk. 212), but if the regulations prescribe a quorum, no less number of members can do business : *Howbeach Coal Co. v. Teague* (1860, 5 H. & N. 151).

In considering whether the requisite number of members is present, only those members must be included who are competent to take part in the particular business before the meeting. The Municipal Act, 1911, S. 48, and Rule 3A of administration rules provide that persons interested in contracts with the council shall be disqualified.

Persons who are present at the meeting in fact but who do not take active part in the proceedings or vote cannot be regarded as absent for the purposes of quorum. The major part of the majority present must be in favour of the Act or resolution. 1926 Cal. 665, 91 I. C. 642.

The assent of every member of a corporation given separately has not the same effect as a resolution passed at a general meeting: *Re George Newman & Co.* (1895, 1 Ch. 674), but in *Baroness Wenlock v. River Dee Co.* (1883, 36 Ch D., at p. 681), Cotton, L. J., in a case where the act was within the powers of a corporation, said: "The Court would never allow it to be said that there was an absence of resolution when *all* the shareholders, and not only a majority, have *expressly* assented to that which is being done."

Any business transacted when no quorum is present, during the time when such business is transacted, is invalid. And when a particular quorum is required by statute, *e.g.*, Municipal Corporations Act, 1893, S. 2, to be necessary for the performance of corporate acts, non-observance of the statutory requirement will be fatal to the validity of the act as against strangers to the corporation: *D'Arcy v. Tamar, &c. Co.* (1867, L. R. 2, Rx. 158).

In the absence of statutory provision or standing orders or special custom, a corporation is not corporately assembled unless the major part is present at the meeting, but in any event a meeting will require the presence of at least two persons to form a quorum. "The word 'meeting' implies a concurrence or coming face to face of at least two persons": Coleridge, C. J., in *Sharp v. Dawes* (1876, 46 L. J. Q. B. 104).

A time limit should be fixed, preferably by standing orders, within which the quorum of a meeting must assemble for the transaction of business.

The physical presence of a quorum does not necessarily constitute a meeting unless there was an intention to meet by previous notice or arrangement: *Barran v. Potter* (1914) 1. Ch. 895.

Section 27 proviso.—Where the original meeting did not include in its agenda consideration of certain objections, it was held that the adjourned meeting could not consider such objections and their decision imposing certain tax without valid consideration of the objections was held invalid. 21 All. 348.

Adjourned Meeting.—There should be at least two members present to constitute a meeting. The prescribed quorum can-

not be less than three. If only one member is present the meeting will have to be adjourned. It is not necessary that the prescribed quorum be present at the adjourned meeting. If at an adjourned meeting only one member is present again, there is nothing in law to prevent him from transacting the business even though technically one member may not constitute a meeting. But in such a case the member present should consider meeting as having failed.

28. At every meeting of a committee the president, if present, or, in his absence or during the vacancy of his office, the senior vice-president present, and if there be no president or vice-president present, then such one of their number, as the members present may elect, shall preside as chairman.

Chairman
of meeting.

Notes.

S. 22 of the old Act.

Analogous Law:—

S. 40, Bengal District Municipal Act, 1884.

S. 79, Bengal Municipal Act, XV of 1932.

S. 45 of Behar and Orissa Municipal Act, 1922.

Ss. 18, 30 & 35 (4), Bombay Municipal Boroughs Act, 1925.

Ss. 24, 25 & 26 (5) Bombay District Municipal Act, III of 1901.

S. 26(g), Bombay City Municipal Act, III of 1888.

S. 25, Burma Municipal Act III of 1898.

S. 62, Calcutta City Municipal Act, III of 1923.

S. 33 of Central Provinces Municipal Act, II of 1922.

S. 32, Madras City Municipal Act, 1919.

S. 28, Madras District Municipal Act, V of 1920.

S. 18 (3), Rangoon City Municipal Act, 1922.

Ss. 55 & 89, United Provinces Municipalities Act, 1916.

The first thing to be done at the time appointed for the meeting is for the chair to be taken. The section provides that the chair will be taken by the president or by vice-president if the president is absent. Should both the president or the vice-president be absent, it is open to the members present to elect one of their number to the vacancy who will retain his position even if the president or vice-president turns up afterwards. Usually, however, the ordinary chairman is allowed a few minutes' grace before any other member is elected to the chair. As a matter of courtesy though not of right, the chairman thus appointed often gives way to the regular chairman by vacating the chair which operates as a virtual resignation.

Absence.—It means absence from the meeting.

Chairman.—The presence or appointment of a chairman is essential. There can be no valid meeting if there is no chairman either statutory or appointed present to conduct the meeting.

Qualifications of a Chairman.—In view of the recent practice of electing non-official presidents the following remarks quoted from Albert Crew's "Procedure at Meetings" are well worth the attention of the non-official chairmen of the municipal committees:

"The ideal chairman should be a man of infinite tact and patience, possess a judicial mind, be able to command the respect of the meeting, be absolutely impartial in his rulings, never allowing the latter to be questioned and always ready and resourceful when difficulties arise. He should be firm, yet courteous, be able to govern men, not allow himself to be carried away by party or other feelings, able to endure bores cheerfully and circumvent mere obstructionists skilfully.

"A chairman should possess a calm, placid temperament, have a proper sense of the dignity of his position, not be garrulous, and be accustomed to rule without fussiness, hauteur, or bullying.

"A good chairman should be able to govern a meeting with genial domination and be a benevolent autocrat, not overbearing or brusque in manner, but determined in a quiet way to have the business of the meeting transacted in an orderly and expeditious manner. He should have a wide knowledge of men, and some acquaintance with the subject under discussion. He should remember that men at meetings are often but children of a larger (sometimes not much larger) growth, and should combat their petulance, unreasonableness, and pettiness by common sense, sweet reasonableness, and quiet determination. He must believe in himself, but not allow his masterfulness to obtrude too much. A chairman should have some strength of character; hearing and seeing all things, but conveniently and quietly ignoring at times those matters which might better have been left unsaid or not done. Occasionally he may be subjected to rude or personal remarks; if these are unjust it is generally well to leave them unnoticed. On the other hand, should there be some cause for such ill-natured criticism, he might change his manner or tactics. Nothing impresses a meeting so much as strict impartiality—especially the minority, the strength of whose opposition is often in inverse ratio to their numbers. Above all, he should not lean overmuch to the popular side; a little judicious praise or approbation of the other side will tend to disarm and counteract the suspicious and quell the incipient disorder of the opposition. At all events he should never allow the unpopular side to feel that 'minorities must suffer.' In fine, he must get his own way in the conduct of the meeting and get it, if he can, peacefully and without friction, making it appear that his will and that of the meeting are one and the same.

"It is a good discipline for a cantankerous and voluble person to be in the chair for a period, but it may result in proving a greater burden than his long-suffering fellow-members ever dreamt of."

Chairman presiding at one's own election.—The general principle that a person may not preside at his own election would seem from the case of *Forrester v. Norton*, (1911) 2 K. B. 953 to be still disregarded occasionally. The principle is really only a branch of the rule which prevents a judge or other person acting in a judicial capacity from deciding matters in which he has direct personal interest that might affect his impartiality as a judge. Thus, in the *Bewdley Case* (*Reg. v. Ownes*, 28 L. J. Q. B. 316) the mayor of the borough of Bewdley had presided over the election of councillors, and as returning officer had returned himself as one of the persons elected. The validity of his election having been questioned on a *quo warranto* information the Lord Chief Justice, Lord Campbell, in delivering judgment against him, said: "Upon the maxim that no man shall be judge in his own cause, I am of opinion that a returning officer cannot be allowed, in the election at which he presides, to return himself." This is not a mere peculiarity of election law, according to which the sheriff of county cannot return himself member of Parliament for his own country. It is said that the duty of the mayor is ministerial. But he has to determine questions arising on the voting papers, and whether those who have voted have given their votes in due form according to the requirements of the statute; and he has to decide difficult and perplexing questions, which are sometimes brought before us. He has the opportunity of acting partially, and of preventing the rights of others. Therefore the maxim applies to the mayor. (Erle, J., added:) 'It is said that the mayor, as returning officer for a borough, has merely a mechanical duty to perform and cannot make a mistake; but experience shows that great skill and consummate artifice are sometimes used at these elections for boroughs, to obtain an unfair result and the law expects that the mayor will withstand these and will not allow the right performance of his duty to be endangered by his becoming a candidate at the election over which he presides.'

Duties and Powers.—The chairman should be well acquainted with the statutory rules, standing orders, or regulations of the body over which he is presiding, not unduly straining their interpretation, but rather sacrificing the letter to the spirit. His decisions must be governed and controlled by the statutory rules, standing orders, or regulations.

The chairman is an integral part of a meeting, and apart from statute or standing orders his primary duties and functions are:—

1. "To preserve order; and
2. "To take care that the proceedings are conducted in a proper manner; and
3. "That the sense of the meeting is properly ascertained with regard to any question which is properly before the meeting." (Chitty, J., in *National Dwellings Society v. Sykes*, [1894] 3 Ch. 159.)

The chairman is not necessarily *functus officio* when he has declared the results of the voting (See *Hickman v. Kent Sheepbreeders*, 1920, 36 T. L. R. 528; and *Cornwall v. Woods*, 1846, 4 Notes of Cas. at p. 560). Before declaring that a motion is lost or carried a chairman has a right to have a re-count if he is uncertain as to who had voted for or against the motion. The correct view from Hickman's case appears to be that he is *functus officio* where re-count after the first declaration is not *bona fide*, i.e., in such circumstances his first declaration must stand. The chairman should not, it is thought, give his first or original vote after he has ascertained the number for or against the motion; he can only then give his casting vote if he is entitled to a casting vote. This first vote can only be properly given at the same time when the other members vote. It is somewhat irregular for any one to vote at all after the result is known even though the chairman has not made his formal declaration.

If the chairman leaves the meeting before the business is completed, apparently any business done after his departure is void (*R. v. Buller*, 1807, 8 East 389), but the appointment of another qualified person to occupy the chair would make this later business valid. In *R. v. Winchester* (1806, 7 East 573) where there was no regular presiding officer at an election, it was held that the control thereof devolves at common law upon the electors themselves.

DUTIES.

1. To see that the meeting is properly constituted, i. e., there is a quorum of members present, and his own appointment regular and in order.
2. That all the requirements, whether of statutory rules, standing orders, or regulations, are duly observed.
3. That the items of business are taken in the order as set out in the agenda paper, unless that order is previously altered or is subsequently altered with the consent of the meetings.
4. That due and sufficient opportunity is given to those who wish to speak to express their views on the subject under debate or discussion.

5. To allow no discussion unless there is some motion before the meeting.

6. To prevent irrelevant discussion, and forbid a second speech on the same motion except in the case of the proposer, who usually has a right to reply on the discussion.

7. To take the sense of the meeting by putting the motions and amendments in proper form. Voting should be by show of hands in the first place, and, if demanded, a poll should be taken. "The right to demand a poll being therefore, as it appears to us, by the Common Law, an incident to the popular election of a person to an office, we think the electors cannot be deprived of it without a special custom of election inconsistent with such right or expressly excluding it by negative terms, *viz.*, that no such right exists in the particular parish." Tindal, C. J., in *Cambell v. Maund*, 5 A. and E., p. 880.

POWERS.

"There is not, as far as I know, any case which has ever arisen to guide us in deciding how far the powers of a chairman extend. Public meetings must be regulated somehow; and where a number of persons assemble and put a man in the chair they devolve on him, by agreement the conduct of that body. They *attorn* to him, as it were and give him the whole power of regulating themselves individually. This is within reasonable bounds. The chairman collects, as it were, his authority from the meeting," (per Jervis, C. J., *Taylor v. Nesfield*; Wills on "Vestries," p. 29n.

1. To preserve and maintain order. The nature and extent of this power and duty of maintaining order cannot be very closely defined *a priori*, and must necessarily arise out of, and in character and extent depend upon, the events and emergencies which may from time to time arise. "It is no doubt the duty of the chairman of a meeting where a large body of people are gathered together to do his best to preserve order." (Pollock, B., in *Lucas v. Mason*, 1874 L. R. Ex. 251).

2. "To decide all emergent questions which necessarily require decision at the time": (Selborne, L. C., *In re Indian Zoedone Co.*, 1884, 26 Ch. D. at p. 77). In the exercise of his authority, the chairman must act *bona fide*, and in the best interests of the meeting. His decisions even when not strictly correct, will be upheld by the Court, unless there is evidence that some substantial injustice has arisen therefrom.

In *ex-parte Mawby* (1854, 3 E. & B. 718) where a chairman of a vestry meeting rejected votes which were admissible, but such rejection caused no difference, in the result the court declined to interfere; and in *Shaw v. Thomson* (1876, 3 Ch. D. 233) the court held that though the conduct of the chairman was erroneous and illegal, it refused to declare the election null and void on the ground that there was no evidence that the poll was improperly conducted or that any voter was prevented from recording his vote.

3. To adjourn the meeting when it is impossible to maintain order. It is said that at common law a chairman has power to adjourn a meeting, but the apparent authority therefor *R. v. D'Oyly* (1840, 12 Ad. and E. 139) clearly shows that the power of the chairman to adjourn was limited for the express purposes of taking a poll. In *R. v. Wimbledon Local Board*, 1882, s. Q. B. D. 459, Brett, L. J., asked the question: Cannot a meeting be adjourned at Common Law? The power of adjournment, apart from regulations, seems to rest entirely with the meeting, *i. e.*, a majority of those present, and not with the chairman, but such power must be exercised *bona fide*, and in the best interests of the meeting.

4. To remove or order the removal of disorderly persons. If a member refuses to obey the chairman when his attention has been drawn to a breach of the rules, standing orders, etc., he should be asked by the chairman to withdraw from the meeting, preferably, by motion of the meeting. If he fails to withdraw within a reasonable time he may be removed by the exercise of reasonable force. If he resists and uses violence or commits a breach of the peace, he may have to answer for his conduct either civilly or criminally (*Doyle v. Falconer*, 1866, L. R., I. P. C., 328).

5. To maintain his ruling on points of procedure.

"When a chairman deliberately rules that a certain amendment cannot be put, it would be improper and indecent for any shareholder to proceed to discuss the propriety of the chairman's ruling" [per Lopes, L. J., *Henderson v. Bank of Australasia*, (1890) 45 Ch. D. 350.]

6. Generally to conduct the meeting that the business thereof may be facilitated and the results clearly and well defined.

In the exercise of his powers the chairman must act *bona fide* and if he does, his decisions even when not strictly correct will be upheld by the court in the absence of evidence that substantial injustice has arisen therefrom. But if the chairman acts improperly or *mala fide* his affected decisions are not binding and in a proper case the courts will interfere. See *Cornwall v. Woods*, 4 Notes of Eccl. and

Mar. Cas. 555; *Reg. v. D'Oyly and others*, (1840) 12 A and E. 139.

Chairman's ruling was upset by Mandamus in *R. v. Sunderland Corporation* (1911) 2 K. B. 458.

If in fact a meeting is properly convened, the president has no power to dissolve it. (A. Crew's "Procedure at Meetings," 13th Edition, pp. 19—25).

It is the duty of a chairman to preserve order, conduct proceedings regularly, and take care that the sense of the meeting is properly ascertained with regard to any question before it; but he has no power to stop or adjourn a meeting at his own will; and if he purports to do so, it is competent for the meeting to resolve to go on with the business for which it has been convened and to appoint another chairman for that object : 1927 Bom. 603; 106 I. C. 265.

The declaration of a chairman as to the result of a poll.—It is not conclusive unless the rules provide it to be so: 47 Bom. 809. See also 1927 Bom. 603.

29. Except as otherwise provided by this Act or the rules, all questions which come before any meeting of a committee shall be decided by a majority of the votes of the members present, the chairman of the meeting, in case of an equality of votes, having second or casting vote.

Votes
majority
cative.

Notes.

S. 23 of the old Act.

Analogous Law:—

S. 41, Bengal District Municipal Act, 1884

S. 82, Bengal Municipal Act, XV of 1932.

S. 46, Behar and Orissa Municipal Act, 1922.

S. 35 (10), Bombay Municipal Boroughs Act, 1925.

Ss. 24 (2) & 26 (10), Bombay District Municipal Act, III of 1901.

S. 36 (g) Bombay City Municipal

pal Act, III of 1888.

S. 27, Burma Municipal Act, III of 1898.

S. 61, Calcutta City Municipal Act, III of 1923.

S. 43, Cantonment Act, II of 1924,

S. 34, Central Provinces Municipal Act, II of 1922.

Ss. 18 (4), Rangoon City Municipal Act, 1922.

S. 92, U. P. Municipalities Act, 1916

Except as otherwise provided.—See S. 22 of this Act and S. 3 (7), Executive Officers Act, 1931.

Question to be decided by majority.—"As a general rule it may be stated that not only where the corporate power

resides in a *select body*, as a city council, but where it has been *delegated to a committee or to agents*, then, in the absence of special provisions otherwise, a *minority* of the select body, or of the committee or agents are powerless to bind the majority or do any valid act. If all the members of the select body or committee, or if all the agents are assembled or if *all* have been duly notified, and the minority refuse or neglect to meet with the others, a majority of those present may act provided those present constitute a majority of the whole number. In other words, in such a case, a major part of the whole is necessary to constitute a quorum, and a majority of the quorum may act. If the major part withdraw so as to leave no quorum, the power of the minority to act is, in general, considered to cease. But where the duties are *purely ministerial and not judicial*, or are of such a nature as to *exclude the idea of action as a body or board* and where they are devolved on *public officers* or agents rather than on the agents of corporation, the rule above stated has been relaxed, and in some instances deemed to be wholly inapplicable. Where a council consisted of eighteen members, exclusive of the mayor, the election of a clerk by nine votes was held lawful and valid, the other members remaining present, though protesting against the method of electing and refusing to vote.* It was held that the legal effect of their refusal to vote while remaining present was an acquiescence in the action of those voting. So, also, a statute in reference to a definite body, declaring that a "*majority of those present at any regular meeting shall be competent*" to transact business, leaves the number which may form a *quorum* to be determined by the common law; that is, there must be at least a majority present, and such a provision, it was considered, did not authorize a *minority of the whole body to act*. So, if a board of village trustees consists of *five members*, and *all, or four, are present*, two can do no valid act, even though the others are disqualified by interest from voting, and therefore omit or decline to vote; their assenting to the measure voted for by the two will not make it valid. If three only were present, they would constitute a *quorum*, then the votes of two, being a majority of the *quorum*, would be valid; certainly so where the three are all competent to act. Dillons' "Law of Municipal Corporations," pp, 847 - 850.

Majority of the votes of members present.—If a quorum is present then the major portion of those present should vote in favour of a particular motion before it can be regarded as carried. Those who refuse to vote should be counted. If

* Nine members out of eighteen do not form a majority and hence under S. 28 the appointment will be illegal.

out of a quorum of seven, three vote in favour of a particular motion and two against and two refuse, then the motion is not carried. It must be borne in mind that the provision is different from similar provisions in some other municipal Acts which provide for the majority of votes of members present and voting. To determine whether a particular question has been carried or not the votes actually cast for a proposal have to be counted and if such votes do not exceed half the number of members present whether all cast their votes or not, then the question should be taken as negatived. To avoid the difficulty experienced in cases where some of the members present did not vote on the question but did not leave the meeting the words "and voting" have been added in some Acts though even in the presence of these words the Bombay High Court in 1927 Bom. 622 held that the word majority meant absolute majority of all the members present. *See* (1851) 17 Q. B. 164 noted below.

N. B.—This principle is not generally observed by municipal committees and questions are sometimes decided by a majority of members present and voting and not by a majority of members present. If in a meeting 20 members were present and nine out of 20 vote for a proposition while eight vote against and the remaining refuse to vote, the proposition is wrongly taken as carried.

Majority of members present—All members not voting.—By an order of the Poor Law Commissioners, regulating the proceedings of Guardians of the Poor in the Parish of M., the election of officers was to be by a majority of guardians present at a meeting of the board. By Poor Law Amendment Act, 1849, (C. 103) S. 19, in case of equality of votes upon any question, at a meeting of guardians of any union or parish, the chairman has a second or a casting vote.

At an election of clerk to the guardians of M. 22 guardians attended. On their assembling, the chairman said he should not vote for any candidate, but merely presided at the meeting as chairman. He did so and took the votes of which there were eleven for one candidate and ten for another. The former was declared elected and entered upon the office. On motion for a *quo warranto*: *Held* the chairman could not be considered as having for the purpose of the election withdrawn and such election was void as not having been determined by majority of guardians present. "Empire Digest," p. 344, para 821. (1851) 17 Q. B. 164.

Effect of refusal to vote.—As long as the members are present in the council chamber and have an opportunity to act and vote with others they will be regarded as present for the purpose of quorum: 1926 Cal. 665. The question is

to be decided by majority of those present and not by majority of those voting.

Casting vote.—In the absence of such a provision a chairman has no second vote. The provision means that the chairman of the meeting (person actually in the chair) has a casting vote, not the chairman of the council or board, if through absence he is not in the chair. The person in the chair has a vote like an ordinary member, and if on taking the votes, including the chairman's ordinary or first vote, the votes are equally divided, the person in the chair has then the right to give a second or casting vote. The casting vote may be given either on the same side as the ordinary or first vote, or it may be given on the opposite side. A chairman is not bound to give either an original or a casting vote. If the voting is equal and the chairman refuses to give a casting vote the motion is lost. It is often the practice for the chairman always to give his casting vote against the motion, whichever way he has voted originally, or whether or not he has so voted. Blackwell's "Law of Meetings," 7th Edition, p. 69.

The opinion of the local Government board was asked in 1908 as to the effect of this rule. The board stated that it would seem from the observations of the judges in *Nell v. Longbottom*, (1894) 1 Q. B. 767, that if, before the chairman of the urban district council votes it is found that the votes for and against a question are equal, the vote which the chairman is then entitled to give would be in the exercise of his right to vote as a duly qualified member of the council, and his right to give a second or casting vote would not in that case arise. If the chairman has voted as a member, and there is an equal division of votes, he would then, in pursuance of the above rule, as applied to the meetings and proceedings of urban district councils by S. 59 (1), Local Government Act of 1894 be entitled to give, as chairman, a second or casting vote.

Practice of House of Commons.—In the House of Commons the Speaker, while entitled to use his casting vote as he chooses, without assigning a reason, usually votes in such a manner as, if possible, not to make the decision of the House final (Erskine May, p. 364); and, in general, the wiser course for the chairman of an executive body is to follow this precedent. There is all the more reason for this where he has a deliberative vote as well. The chairman may state his reason for his vote which may be entered in the minutes (Erskine May, p. 364). The chairman need not give his deliberative vote until he has counted the other votes, *Nell v. Longbottom*, (1894) 1 Q. B. D. 767; 61 J. P. 187. Muirhead's "Law of Meetings."

Equality of votes means equality of valid votes. If a chairman is doubtful as to the validity of any vote, he may give a contingent or hypothetical casting vote, to come into effect if it be ultimately found that there is an equality of valid votes. *Bland v. Buchanan*, (1901) 2 K. B. 75.

Validity of votes.—The matter must be decided by a majority of valid votes. Votes of members disqualified from voting at a meeting are not to be counted. A suit for declaration that certain votes cast in favour of a matter before the meeting are not valid is maintainable. 47 Bom. 809 ; 1923 Bom. 305.

Casting vote by drawing lots.—A ballot for the election of a president was taken by the chairman of the meeting. Both the candidates got equal votes.

The chairman did his best to decide between the two candidates, and finding himself unable to draw any distinction between them on merits he drew lots in order to enable him to give his casting vote impartially, and gave his casting vote to defendant 2. Plaintiff sued to set aside the election of defendant 2:

Held, that, (1) the legislature has not in S. 36 (q)* of the Act in any way fettered the presiding authority as to the means by which he may make up his mind, whether by exercising his judgment, consulting a friend, spinning a coin, drawing lots, or otherwise, before intimating his preference for or choice of one candidate or another. The chairman, therefore, had given a valid casting vote.

The chairman did exercise his judgment in considering the respective merits of the two candidates, and by reason of their equality of merit he was entitled to assist himself in choosing between them by drawing lots.

Sec. 37† (1) of the Act does not prescribe the method of appointment or in any way fetter the decision of the members of the corporations upon this question, and so the regulations of 28th March 1927 are mere machinery for giving effect to the decision of the corporation upon that question, and that the regulations are *intra vires*.

The giving of a vote does not necessarily involve the exercise of judgment at all, it involves merely the expression or intimation of a wish or choice. That wish or choice may indeed be actuated by judgment, but it may also be actuated by mere whim or caprice. The method by which the wish or choice is arrived at is wholly immaterial, so long as the person upon whom the duty of giving vote is cast expresses or intimates his wish or choice, however arrived at.

* Corresponds to S. 29 of P. M. Act.

† Cf. S. 20 of Punjab Municipal Act.

The word "majority" in S. 36 (g) of the Act means absolute majority having regard to the fact that the words used are "majority of votes of the councillors present and voting on that question." Cf. 105 I. C. 759; 1927 Bom. 622.

Record and publication of proceedings.

30. (1) Minutes of the proceedings at each meeting of a committee shall be drawn up and recorded in a book to be kept for the purpose, shall be signed by the chairman of the meeting or of the next ensuing meeting, shall be published in such manner as the local Government may direct, and shall, at all reasonable times and without charge, be open to inspection by any inhabitant.

(2) A copy of every resolution passed at any meeting of a committee shall, within three days from the date of the meeting, be forwarded to the Deputy Commissioner.

Notes.

Section 24 of the old Act.

Analogous Law:—

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| Ss. 43 & 60, Bengal District Municipal Act, 1932. | S. 41, Cantonment Act, II of 1924. |
| S. 84, Bengal Municipal Act, XV of 1932. | S. 35, Central Provinces Municipal Act, II of 1922. |
| S. 48, Behar and Orissa Municipal Act, 1922. | Rule 8, Schedule II, Madras City Municipal Act, 1919. |
| S. 35 (9), Bombay Municipal Boroughs Act, 1925. | Rule 9 of Schedule III, District Municipal Act, V of 1920. |
| S. 26 (9) Bombay District Municipal Act, III of 1901. | S. 18 (6), Rangoon City Municipal Act, 1922. |
| S. 36 (a), Bombay City Municipal Act, III of 1888. | Ss. 94 & 328, United Provinces Municipalities Act, 1916. |
| S. 28, Burma Municipal Act, III of 1898. | S. 25, Punjab District Board Act, 1883. |
| Ss. 76 & 78, Calcutta City Municipal Act, III of 1923. | <i>English Law:—</i> |
| | Ss. 22 (5) & 233, Municipal Corporation Act, 1882. |

Reports and minutes.—Minutes being *prima facie* evidence of the proceedings of meetings, are usually taken as accurate in legal proceedings until the contrary is proved. It is essential, therefore, that they should contain a full and accurate record of all business done, and in particular, the resolutions passed at meetings. The record should be impartial and above suspicion. A clear distinction should rigidly be drawn between a report and a minute. The former chiefly consists of what was said at a meeting, and is of the nature of opinion; its place of record is ordinarily the newspaper; the latter consists of what was done or agreed upon and its place of record is the minutes. Speeches

and arguments form the proper material of the newspaper report, the resolutions and decisions are the proper material for the minutes.

The pages of the minute book should be numbered consecutively so as to prevent the removal of a page. Frequent alterations or mutilation of the minutes, even when made before the chairman has signed them, necessarily give rise to suspicion, and any actual inaccuracy in the minutes is fatal to their value and usefulness.

Contents of minutes.—The minutes of a meeting should be a concise and precise record of the proceedings, and must be:—

- (1) An exact and full account of what was actually agreed upon and decided, and nothing more, sufficiently detailed and complete, so that a member who was absent could fully understand and appreciate what was done at that meeting.
- (2) Free from ambiguity and absolutely impartial.

Contents of minutes, *inter alia*, should include:—

- (1) The names of the qualified members of the meeting who are present. The occasional practice of including the names of paid officials should be avoided, though there is no objection to adding that they were "in attendance." The members and not the officials constitute the meeting.
- (2) Clear and full details of all contracts and questions involving financial considerations.
- (3) The exact wording of all resolutions which have been adopted, with the names of mover and seconder (if any).
- (4) Appointment, salaries, powers, and duties of executive officers (these should be very definite and explicit).
- (5) Instructions to officials and all transactions and orders authorised or given at the meeting.
- (6) Statements of protesting minorities should be included if demanded.

Minutes should be paged and carefully indexed, and when not in actual use should be kept in a fireproof safe. Where the business is of some importance, copies of the minutes should be circulated with the succeeding notice of the next meeting, and this is a common and useful practice in regard to meetings of the more important local authorities.

The usual procedure as to minutes.—It is customary for the minutes of a meeting to be read or, where copies of minutes are circulated amongst the members before the meeting, to be taken as read at the next meeting, and for the then chairman (who may not have been present at the previous meeting) to ascertain from the meeting whether they are a true and accurate report of what was done at the preceding meeting, and to sign them if approved, or, as it is usually called, “confirmed” (*i. e.*, verified but not adopted or ratified) by the meeting. If the minutes are challenged as to their accuracy, and no other challenge is permissible, the minutes are altered as decided by the meeting, or failing agreement, by a majority. No question as to the policy which the minutes record can be raised, either by debate or amendment, and any general discussion on the minutes would be distinctly out of order. The mayor or chairman then makes the necessary alterations in the minutes and initials such corrections. He then signs the minutes. It is usual in such circumstances to have an amendment to the resolution recorded in the next minutes, “That the minutes of —were signed as correct,” recording the alteration in the minutes noted in the succeeding minutes of the proceedings. There is thus a confirmation of the alterations of the minutes previously initialled by the chairman

Alterations should not be made in the minutes except to correct obvious errors or inaccuracies as to record, and the latter should preferably be done only with the consent of the meeting at which the minutes are signed. Such alterations should be completed and initialled by the chairman before he formally signs the minutes. Any discussion on the minutes except as to their accuracy is out of order, but questions arising out of the minutes are permissible within limits, if only for information and not for discussion or decision. A. Crew, “Meetings of Local Authorities,” pp. 73—78.

Signing by the chairman is essential — Confirmation is not.—The practice and the law relating to minutes are usually not identical. It is commonly supposed, because it is invariably done, that minutes must be confirmed by a meeting and then signed by the chairman to make them *prima facie* evidence of the proceedings. S. 30 does not require confirmation. Confirmation may be provided under the standing rules under S. 31.

The Municipal Act only provides that the minutes, when signed by the chairman, shall be received in evidence without further proof, but as it requires that they shall be signed at the same or the next ensuing meeting, it is suggested there

is an implication that they shall be confirmed by the meeting first—at all events, it is the usual practice for the meeting to confirm them first before the mayor or chairman signs them.

In short, confirmation of the minutes by a meeting, though eminently desirable, is not legally essential, and if they are merely signed by the chairman, they are *prima facie* evidence of the proceedings. Where the rules provide for such confirmation the word “confirm” “sometimes means merely verify; it is commonly used in that sense at the meetings of public bodies who confirm the minutes of their last meeting, not meaning thereby that they give them force, but merely that they declare them accurate:” Campbell, C. J., in *R. v. Mayor of York* (1853, 1 E & B., at p. 594). Hence, a member of a local authority does not make himself responsible for an act done at a meeting at which he was not present, and which is complete without further confirmation, merely by voting at a subsequent meeting for the confirmation of the minutes: *Burton v. Bevan* (1908, 2 Ch. 240), following *Re Lands Allotment Co.* (1894, 1 Ch. 616). And it is suggested that if the minutes are signed by “the chairman of the next succeeding meeting,” who was not present at “the meeting at which the proceedings were had,” he is not thereby made responsible for what was done at such previous meeting, provided the minutes were duly confirmed by the meeting at which he signed them.

The confirmation of the minutes by a meeting, therefore, merely verifies their accuracy; it does not necessarily mean that such minutes are adopted, or that the resolutions therein are confirmed or ratified by the meeting.

The importance of the accuracy and safe keeping of the minutes cannot be over-estimated. They are usually the only evidence available of the proceedings of a meeting. Removal or mutilation of pages of a minute Book, or alterations therein, necessarily gives rise to suspicion of bad faith, and as minutes are constantly referred to in legal proceedings, they must be, like Caesar’s wife, entirely above suspicion, otherwise they are useless.

Minutes must never be altered after being signed by Chairman.—Minutes, once made and signed, should never afterwards be altered or corrected in any circumstances. In *Re Cawley & Co.* (1889, 42 Ch. D., at p. 226) Esher, M. R., said: “Minutes of board meetings are kept in order that the shareholders of the company may know exactly what their directors have been doing, why it was done, and when it was done; and any shareholder, looking at these minutes as

they now stand, would suppose the dates were agreed upon at the meeting and were filled in, whereas, in truth, no dates were agreed on by the directors at all. The dates formed no part of the resolution, and yet here is the entry made as if they formed part of the resolution, then passed. I shall never again see or hear of the secretary of a company, whether under superior directions or otherwise, altering minutes of meetings, either by striking out anything or adding anything. The proper mode of fixing the dates would have been by resolution, and then entering the resolution on the minutes." Crew's 'Meetings of Local Authorities,' pp. 73-80.

Minutes are prima facie evidence of the proceedings of a meeting.—In *Re Indian Zoedone Co.* (1884, 26 Ch. D., at p. 77) Selborne, L. C., said: "The minutes in the books are to be received, not as conclusive, but as *prima facie* evidence of resolutions and proceedings at general meetings; and also it may be added, and, I think, correctly, that in as much as the chairman who presides at such meetings, and has to receive the poll and declare its result, has *prima facie* authority to decide all emergent questions which necessarily require decision at the time, his decision of these questions will naturally govern the entry of the minutes in the books; and though in no sense conclusive, it throws the burden of proof upon the other side, who may say, contrary to the entry in the Minute Book, following the decision of the chairman, that the result of the poll was different from that there recorded." *Ibid.*

Proof of proceedings.—S. 78, Cl. (5) of the Evidence Act provides that the proceedings of municipal bodies in British India may be proved by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authbrity of such body. Record of proceedings of committees are public documents within S. 74 of Evidence Act. 19 All. 293; 30 I. C. 643, 1923 Cal. 675; 75 I. C. 506.

Minutes are not only evidence of the proceedings of the meeting, and may be contradicted by other evidence: *Tothill's* case (1865, L. R. 1 Ch. 85). "As they were directors, the minute is admissible against them; but none the less does other evidence appear admissible though the existence of the minute is a circumstance to be considered in judging of its weight": Stirling, J., in *Re Pyle works*, No. 2 (1891, 1 Ch. 184). An unrecorded resolution may be proved *aliunde* (i.e., from another place or person): *Knight's* case (1867, L. R. 2 Ch. 321), followed in *Re Fire-proof Doors, Ltd.* (1916, 2 Ch. 142).

Presumption failing minutes.—In *Re Provident Assurance Society* (1864, 1 De G. J. & S., at p. 509) Westbury, L. C., said: "It was the duty of the company to keep exact and accurate minutes of what took place at their general meetings, and that if those minutes are not forthcoming it must be assumed as against the company that whatever the directors ought to have brought forward at that general meeting, whatever then ought in conformity with the antecedent proceedings of the directors to have been submitted to the shareholders, that was actually so submitted." And Kekewich, J., in *Re Liverpool Household Stores Association* (1890, 59 L. J. Ch. 616, at p. 618), said: "I hold that directors ought to place on record, either in formal minutes or otherwise, the purport and effect of their deliberations and conclusions; and if they do this insufficiently or inaccurately they cannot reasonably complain of inferences different from those which they allege to be right."

Publication.—See P. G. Notification No. 13981 of 16th July 1918. The notification lays down the following manner of the publication of the minute:—

An abstract of the minutes of each meeting of a committee shall be affixed in some conspicuous spot accessible to the public at the place of meeting of the committee and a copy of such abstract shall be supplied to the manager of every newspaper which is published within the limits of the district in which the municipality is situated.

There is no obligation to get these proceedings printed.

31. (1) Every committee may, from time to time, and shall if so required by local Government, provide by bye-laws consistent with this Act and with the rules for

- (a) the time and place of its meeting ;
- (b) the manner in which notice of ordinary and special meetings and adjourned meetings shall be given ;
- (c) the quorum necessary for the transaction of business at ordinary meetings ;
- (d) the conduct of proceedings at meetings and the adjournment of meetings ;
- (e) the custody of the common seal and the purposes for which it shall be used ;
- (f) the appointment of sub-committees and their duties, the division of duties among the members of the committee and the powers to be exercised by such members as are primarily responsible for the current executive administration, whether presidents, vice-

- presidents, members of sub-committees or individual members ;
- (g) the persons by whom receipts shall be granted on behalf of the committee for money received under this Act ;
 - (gg) the conditions on which registers, documents, maps and plans of the committee may be inspected by the public, and copies of them supplied, and the fees payable for such inspection or for the supply of such copies ;
 - (h) the appointment, duties, executive powers, leave, suspension and and removal of its officers and servants ;
 - (i) the term for which a vice-president shall hold office ;
 - (j) appeal from executive orders of sub-committees, the president, vice-president, members, officers and servants of the committee ; and
 - (k) all other similar matters.

(2) No bye-law made under clause (c) or clause (d) or clause (f) of sub section (1) shall take effect until it has been approved by the local Government.

(3) Every bye-law made under this section shall be published in such manner as the local Government may direct.

Notes.

S. 25 of old Act. The wording of sub-clause (f) has been altered, and sub-clause (j) is new.

Analogous Law :—

- S. 351-A, Bengal District Municipal Act, III of 1884
- Ss. 75, 91, 86 & 89, Bengal Municipal Act, 1932.
- Ss. 42, 240 (1), 49 & 52, Behar and Orissa Municipal Act, 1922.
- Ss. 58, 39 & 38, Bombay Municipal Boroughs Act, 1925.
- Ss. 26 (3), 27 (1), 29 & 46, Bombay District Municipal Act, III of 1901.
- Ss. 36 & 38, Bombay City Municipal Act, III of 1888.
- Ss. 30 & 46 (20), Burma Municipal Act, III of 1898.
- Ss. 60 & 66, Calcutta City Municipal Act, III of 1923.

- Ss. 24, 27, 36 & 86. Central Provinces Municipal Act, II of 1922.
- S. 31, Madras City Municipal Act, 1919.
- Ss. 25 & 74, Madras District Municipal Act, V of 1920.
- Ss. 6, 306 (1) (2), 285 (18), Rangoon City Municipal Act, 1922.
- Ss. 51, 106, 107 & 108, 297 a, b, c, d U.P. Municipalities Act, 1916.
- S. 26, Punjab District Board Act, 1883.

English Law :—

- S. 200, Public Health Act, 1875.
- S. 77, Municipal Corporation Act, 1882.

Recent changes.—By S. 13 (a) of the Punjab Amendment Act, III of 1933, sub-section (1) has been substituted for the old sub-section inserting the words in italics for “make” and substituting “for” for “as to” and sub-clause (gg) has been added.

In sub-section 2 the words in italics have been inserted by S. 13 (b) of the Punjab Amendment Act, III of 1933. The Amendment empowers local Government to compel committees to make bye-laws under S. 31.

Time and place of meeting.—Place is generally the Town Hall or other building where meetings of the committees are generally held. If the meeting is not held in the Town Hall or usual place of meeting, the place should be indicated.

Clause (b).—The form, mode of issuing and serving and other details of notices for meetings are usually prescribed under the rules made under this clause.

Subject to the Statute and/or Standing Orders governing any particular meeting, the following are the general principles of law affecting notices of meetings.

The first essential in regard to meetings is that the proper persons should have met to consider if the meeting should be called, *i.e.*, the meeting must be properly authorised and convened, otherwise the resolutions passed thereat are not valid: *In re State of Wyoming Syndicate* (1901, 2 Ch. 431).

As regards meetings of local authorities, Statute and/or Standing Orders provide who shall convene a meeting, *e.g.*, S. 25 of the Act.

The following points enumerated by Albert Crew in his book on “Meetings of Local Authorities,” 13th Edition as regards validity or otherwise of notices are quoted here for guidance of committees:—

NOTICE OF MEETINGS.

The meeting may concern only an elected or selected class of people, in which case *due and adequate notice* must be given to *each member entitled to be present* in strict accordance with the standing orders or rules of the body, organisation, or society affected, and such notice must be issued by the proper officer, person, or authority. Where no definite notice is required by the rules, a reasonable notice must be given which will enable those whose duty it is to attend to have the opportunity of attending.

1. *Want of notice in such cases may affect the validity of a meeting, and a notice must be given to every person entitled to attend.* The omission to summon one member to a corporate

meeting avoids the act of that meeting (*R. v. Shrewsbury*, 1735, cases. *Lee*, temp. Hardwicke 147), "I am of the same opinion [*i.e.*, no justification of an assault had been made out, on the ground that the meeting was not a select vestry duly assembled] The question is whether the allegation that the defendants were duly assembled as a select vestry has been made out. As they were assembled not on the general day of meeting, but on a particular day and for a special purpose, they should have proved the notice, without which they could not be assembled as a vestry. The sort of notice is not material; but some notice should have been shown, and it is admitted that one of them received none" (*Bosanquet, J.*, in *Dobson v. Fussy*, 1831, 7 Bing., p. 311.)

Where a certain act is to be done by a particular body all the members entitled to attend must be summoned if they are within a reasonable summoning distance, and the omission to summon any one so entitled will invalidate the proceedings unless all reasonable inquiries have been made and he cannot be found. (*Smyth v. Darley*, 1849, 2 H. L. C. 789.) Where a person is beyond summoning distance the empty form need not be gone through of sending notice to him, and in *Young v. Ladies' Imperial Club*, 1920, 36 T. L. R. 392, the Master of the Rolls was inclined to the opinion that the same rule would apply in the case of a member who was so ill as to be unable on that ground to appear, but except in these cases there is an obligation to send a notice to each member of the committee, and failure to do so, renders invalid any resolutions passed by such a committee, so that a person who agreed to allow her name to appear on the list of members of a committee but had intimated that she would be unable to attend any of the meetings, is a summonable person, and a notice must be sent to her, otherwise any resolutions of such a committee will be invalid. A member of a committee has certain duties to perform as well as privileges to enjoy, and it may well be that a person joining a club does so on the faith of the particular member of a committee discharging the duties attaching to the office.

A public body entrusted with the performance of a public duty cannot hold an extraordinary meeting unless all the members be summoned who can be summoned, or the unsummoned members are actually present at such meeting. The proceeding at a meeting at which any individual is not present who might have been summoned and was not summoned, are void, though the omission be accidental, or though the individual has given a general notice that he wishes not to be summoned (*Rex v. Langhorne*, 1836, 6 N. & M. 203).

2. *Want of notice or an improper notice may nullify the acts done at a meeting of this kind.*—The notice convening the meeting should contain sufficient description of the important business which the meeting is to transact, and the meeting cannot in ordinary cases go outside the business mentioned in that notice (*Longfield Paris Council v. Wright*, 1918, 88 L. J. Ch. 119). “In my opinion what was done was wrong: first, because there was no proper notice given to a person who ought to have had notice . . . and, secondly, because another gentleman was present who ought not to have been”: (North, J., in *Lane v. Norman*, 1891, 66 L. T., p. 86). The object of requiring a proper notice of the purposes for which the meeting is to be held, is to enable a member to exercise his own judgment as to whether he will attend or not. A notice may be good in part and bad in part, and it is not wholly invalid because it extends to something which cannot be done at the meeting: (*Cleve v. Financial Corporation*, 1873, L. R. 16 Eq. 363).

3. *Insufficient notice of purpose of meeting may affect the validity of resolutions passed thereat.*—Undoubtedly it was the intention of the legislature in framing this Statute to provide that due information should be given to all the parishioners of the special purpose for which their attendance is required. . . . As to the second part of the resolution—the making a rate for the general expenses of the parish—we are all clearly of opinion that the notice was wholly insufficient for that purpose [*i.e.*, because the notice did not clearly apprise the parishioners of the special purposes for which the meeting was called] and that the provisions of the Statute have not been complied with”: (per Dr. Lushington, in *Smith v. Deighton and Billington*, 1852, 8 Moore P. C. 187). “If the circular convening that meeting had stated the specific object for which it was to be held, I do not deny that the resolution may have been within the scope of its authority”: (St. Leonards, L. C., in *Laves's Case*, 1852, 1 De G. M. & G., p. 421). In *Young v. Ladies' Imperial Club* [(1920) 36 T.L.R. 392] it was held that as the notice of a meeting did not state the object of the meeting with sufficient particularity it was invalid, and consequently the proceedings of that meeting were likewise invalidated. See *R. v. Corporation of Dublin* (1911, 2 Ir. R. 45); *R. v. Macdonald* (1913, 2 Ir. R. 55).

4. *Waiver of notice.*—But if all the members are present without notice of a resolution, and none object to the informality, want of notice will be excused, and the proceedings cannot afterwards be invalidated on that ground (*Machell v. Newinson*, 1809, 11 East, 84n). See also in *re Oxted Motor Company*, 1921, 3 K. B. 22.

5. *Notices must be fairly explicit and clear to ordinary minds.*—They must be frank, open, clear, satisfactory, and free from “trickiness” (*Kaye v. Croydon Tramways*, 1898, 1 Ch. 358).—“The Court does not scrutinise these notices with a view to exercise criticism, or to find out defects, but it looks at them fairly. I think the question may be put in this form: What is the meaning which this notice would fairly carry to ordinary minds? That, I think, is a reasonable test.” (Chitty, J., in *Henderson v. Bank of Australasia*, 1890, 45 Ch. D., 330).

6. *Notice of special business should be very explicit, and give the fullest information relating to the matters for consideration or decision.*—When a meeting is summoned for special business, no other business should be transacted except that of which due and adequate notice has been given, although, in general, what is known as ordinary business (if included in the agenda paper of which due notice has been given) may be transacted at any meeting of a recognised corporate body. There are generally some regulations as to the calling of special meetings, or the transaction of special business, which invariably provide that a certain time must elapse before such meeting or business can be held or transacted. In some cases special business can only be transacted at specified meetings.

7. *In giving notice of a meeting it is necessary to give in detail the following particulars:* place, date, day, and time of meeting. If one meeting is to be held immediately after another it is desirable to fix the time of the second meeting when it is thought the first meeting will end, adding the alternative “or at the rising of the (previous) meeting.”

8. *A member of a corporation or other body who has properly received a notice convening a meeting thereof has a right to attend and to take part in the proceedings.*—In practice there is no difficulty as to this rule, but it may well be that in the case of a limited or statutory company or meeting of creditors where the members entitled to attend may conceivably number some thousands, a serious practical difficulty might arise when a large majority desired to be present; the common law rule seems to be that all persons properly entitled to attend have the right to attend and take part in the proceedings. The omission to summon one member to a corporate meeting avoids the acts of the meeting (*R. v. Shrewsbury*, 1735, cases *Lee. temp. Hardwicke.*, 147). In *R. v. Hill* (1825, 4 B. & C. 426) the principle was laid down that in the absence of any specific day fixed by charter or law, it is essential that notice of the meeting and of the business to be transacted there should be given to all persons

entitled to attend, and that it should be a reasonable notice and given at a reasonable time before the meeting.

A suggestion was made when the majority of the councillors of the borough of Poplar was committed to prison for contempt of court, that being a majority they could carry on the business of the council. Apart from the provisions of the Municipal Corporations Act, 1882, a majority cannot validly hold a meeting unless every member is properly summoned and given an opportunity to attend. A majority cannot bind a whole corporation if a minority is deprived of its right of attending the meeting, *e. g.*, holding a meeting to which it has not reasonable access or where the place of meeting is so inconvenient or small that it is physically impossible to be present. Every corporate act must be done at a meeting properly convened, properly constituted, and properly held at the usual place of meeting at which every member has the right to attend.

9. *Absence, beyond summoning distance (or possibly serious illness), of a person entitled to attend a meeting is a good reason for not summoning a member.*—“The election being by a definite body on a day on which, till summons, the electors had no notice, they were all entitled to be specially summoned, and if there was any omission to summon any one of them, unless they all happened to be present, or unless those not summoned were beyond summoning distance (as, for instance, abroad), there could not be a good electoral assembly, and even a unanimous election by those who did attend would be void”: (Campbell, C. J., in *Smyth v. Darley*, 1849, 2 H. L. C. 789, at p. 803).

In *re Portuguese Copper Mines* (1889, 42 Ch. D. 160), a director of a company, on being told a meeting would be held next week said, “I cannot be there.” It was held that this could not be relied on as a waiver of his right to notice, and as no notice was sent to him the meeting was declared invalid. “Perhaps if a member were at such a distance that it would be absolutely impossible for him to attend, then the secretary might be excused from sending a notice to him and the meeting would be properly convened. Possibly the same exception might hold good when a member was so dangerously ill that he could not be moved”: (Sterndale, M. R., in *Young v. Ladies Imperial Club*, 1920, 36 T.L.R. 392.)

It is desirable to send notices of meetings to all members in all circumstances, even to those who may be abroad, since it enables them to be kept fully informed of what is being done at meetings of bodies of which they are members.

10. *Adjourned meetings.*—A meeting at common law may be adjourned to complete unfinished business, and in such cases

no summons of such adjourned meeting need be given, but no fresh business which may casually arise can be transacted at this adjourned meeting unless proper notice and summons have been issued (*R. v. Grimshaw*, 1847, 11 Jur. 965).

11. *Any other business.*—Where notice is given of a meeting of a corporation for one particular business only, the body cannot go on to other business unless the whole body is met and it is done by consent (*R. v. Wake*, 1782, 1 Barn. K. B. 80). General business of a formal or unimportant character may be transacted without notice under the heading of *other business*, provided no one present objects. If such business involves the expenditure of money it is probable that the persons present may be personally liable therefor should a subsequent meeting refuse to ratify their acts.

12. *Notice sent but not received through neglect of member.*—In *James v. Chartered Accountants (Institute)*, 1907, 98 L. T., 225, it was held that a notice posted to the registered address of a member proposed to be expelled was sufficient, though, having changed his address, he never actually received it and it had been returned through the Dead Letter Office, the member having neglected to notify his change of address.

13. *Clear days' notice and Sundays.*—Where the rules specified a fortnight's notice, a notice sent on the 1st of November for a meeting to be held on the 14th November was declared invalid in *Labouchere v. Wharnccliffe*, 1879, 13 Ch. D. 346; at p. 354. In the absence of special provision the number of days must be "clear," i.e., exclusive of the day of service and the day on which the meeting is held.

"Four clear days" means days exclusive of the day of service and of meeting: e.g. a meeting, four clear days' notice of which was issued on the 20th inst., could not be held before the 25th inst. (*Mercantile Co. v. International Co. of Mexico*, 1893, 1 Ch. 484n). In *Lawford v. Davies* (1878, 4 P. D. 61) it was held that 1st July 4 a.m. to 21st July 12 noon was only twenty days; and in *R. v. Middlesex Justice* (1843, 12 L. J., M. C. 59) where the Turnpike Act, 1823, required that notice of appeal should be served within six days and the last day of the six days was a Sunday, it was held that notice on the Monday following was too late, and that the service of such notice upon a Sunday would not be a good notice. And see *R. v. Aberdare Canal Co.* (1850, 14 Q. B. 854).

When the period *within* which an act or proceeding is directed does not *exceed seven days*, Sundays, Christmas Day,

public feasts or fasts, are not to be reckoned in the computation; but see *ex-parte Simpkin* (1859, 29 L. J. M. C. 23) where Sunday was included in a two days' notice. But *seven days at least* would include Sundays, &c.; Sundays are usually included in calculating days of notice, except where there is statutory provision to the contrary (*R. v. Middlesex J.J.*, 1843. 12 L. J., M. C. 59 six days' notice). Sundays are, however, usually excluded in any notice for a period of less than seven days (Municipal Corporations Act, 1882, S. 230). Clear days means a time within which an act is to be done, *e.g.*, to do an act *within* fourteen days, *i.e.*, it must be done before the fourteenth day, or may mean an interval to elapse before an act can be done, *e.g.*, to do an act *after* fourteen days, fourteen days must be included in the interval.

Where an act is required by Statute to be done so many days *at least* before a given event, the time must be reckoned, excluding both the day of the act and that of the event, *i.e.*, excluding the day of service and the day of the meeting (*R. v. Shropshire Justices*, 1838, 8 A. & E. 173; *Norton v. Town Clerk of Salisbury*, 1846, 4 C. B. 32; *Young v. Higgon*, 1840, M. & W. 49; *Blunt v. Heslop*, 1838, 8 A. & E. 577; *Peacock v. Reg.*, 1858, 27 L. J. C. P., 224). In *Lanes & Yorks, R. Co. v. Swann* (1916, 1 K. B. 263) Sunday was excluded in a 48-hour notice.

The Agenda.—Business cannot be discussed of which no notice is given and which is therefore not on the agenda, unless such business is of a purely informal nature. In the case of the *King v. The Corporation of Dublin** a special meeting of the corporation was summoned on a requisition of seven ratepayers to consider the question of unemployment in the city and see what means could be adopted to alleviate it. At the meeting a resolution was passed authorizing the city treasurer to arrange for £10,000 to be expended on useful works for the alleviation of unemployment. It was held that the notice of the meeting was insufficient to enable the meeting to pass such a resolution. The reason for this rule was clearly stated by Peterson, J. :—

“It may be that a very important question is going to be considered at the meeting; it may be on the other hand, that the only business is purely formal, paying some trades man or something of that description. In the one case, the members would attend in force and in the other case, as it

* [1911] 2 Ir. R. 245, and see *R v. Mardon* [1913] 2 I. R. 55.

was a mere matter of form, the members would not attend beyond the necessary quorum. Accordingly, in my view, I think these regulations do require that the notice convening the meeting should contain sufficient description of the important business which the meeting is to transact, and that the meeting cannot in ordinary circumstances go outside the business mentioned in that notice.”*

On the other hand, the chairman has no right to veto discussion upon a matter expressly mentioned in the notice convening the meeting ; a mandamus will lie if he refuses discussion of such a question.†

Some of the business rules provide that any matter not on the agenda may be taken up in a meeting with the consent of the members present. This rule makes no exception to the case of adjourned meetings. The rule in my opinion so far as it regulates the proceedings of an adjourned meeting is against the express provisions of S. 27. Even in the case of other meetings the rule is against the principle underlying the procedure of meetings of public bodies. The principle is that no business should be transacted at such meetings before notice to all members and without notice of the business to be transacted at a meeting. When all the members are present the rule would not be objectionable, otherwise that rule gives a handle to interested persons to consider matters which probably would not bear close scrutiny of the house if all had notice of the matter.

Scope of bye-laws under S. 31.—The bye-laws do not expressly provide that if a notice of a meeting is not issued in accordance with the rule prescribed or that if the margin of time is less than that prescribed the meeting convened in these circumstances or the acts done at the meeting shall be void. Such defects are negligible under S. 37.

Provisions as to service of notice are not mandatory.—The intention of the legislature should be construed as mandatory if the aim and object of the statute would be clearly defeated if the direction to do a thing in a particular manner is not strictly observed.

Where the prescription of an Act relates to the performance of a duty by a public officer the breach of such prescription, when it does not cause any real injustice, does not invalidate the act done under the Act and therefore such prescriptions are merely directory. 1930 Oudh 434.

* *Longfield Parish Council v. Wright*, (1928) 88 L. J. (Ch.) 119, 16 L. G. R. 865

† *R. v. Marylebone Licensing Justices*, 46, L. J. Jo. 133.

S. 214 has no reference to a notice prescribed by a regulation framed in exercise of a power conferred by S. 31 but the section embodies the general intention of the legislature in the matter of a notice in regard to act sanctioned by the Act.

“Where any notice issued under any section of this Act or under any rule or bye-law requires an act to be done for which no time is fixed by such section or rule or bye-law, the notice shall specify a reasonable time for doing the same; and it shall rest with the Court to determine whether the time so specified was a reasonable time within the meaning of this section.”

It is true that the section quoted above has no reference to a notice prescribed by a regulation framed in exercise of power conferred by S. 31, but there is equally no doubt that the section embodies the general intention of the legislature in the matter of a notice in regard to acts sanctioned by the Act. Convening of a meeting is clearly an act sanctioned by the provisions of Ss. 25 & 31 of the same Act. The test therefore is whether the margin of time available to the plaintiff between the date of the service of the notice and the date of the meeting was reasonable or not. This being the true nature of the question it follows that the regulation in this behalf did not intend that the limit of seven days should be mandatory.

If reasonable time is allowed to the person on whom the notice is served for the purpose of doing the act required of him by the notice, and if the notice has been served in one of the modes prescribed by the Act, the intention of the legislature is satisfied: 28 Bom. 66; 7 Bom. 399 and 21 All. 348, Dist. 1930 Oudh 434.

Contents of agenda.—The following notes on the contents of the agenda paper are reproduced from Crew’s “Procedure at Meetings” for guidance of committees:—

The order and nature of business to be transacted at a meeting is stated on an agende paper, more familiarly called “the agenda.” It should, as a rule, be circulated with the Notice to the members who are entitled to be present at a meeting and often the Notice and Agenda form one document.

The agenda should follow some common form, varying with the meeting and the business to be transacted.

Agendas are often drawn up in the following order:—

1. Appointment of chairman (if there is no regular chairman).

2. Verification of the correctness of the minutes of the previous meeting (usually called confirmation of minutes).
3. Correspondence (a precis of ordinary and routine letters; important letters in full).
4. Reports of committees and/or officers' (reports should be given *in extenso*),
5. Finance (consideration of accounts and financial questions).
6. Any special business (the nature of which should be specifically and explicitly stated).
7. Motions (of which due notice has been given).
8. General business.

Under general business an opportunity may be taken to deal with any minor matters which could not conveniently be deferred. If there is any opposition to such a course in relation to any particular piece of business, it should be adjourned so that full notice of the matter might be given.

In preparing the agenda, care should be taken to include therein all the business to be transacted, with sufficient detail to enable the members to grasp what it means.

An agenda should be clear and explicit, free from ambiguity, informative, and in a summary form.

It should enable the members to ascertain what matters will be discussed, and, if circulated beforehand, gives them an opportunity of forming some opinion as to the course which they will adopt at the meeting. A properly drawn-up agenda prevents many questions being put to the chair, considerably shortens a meeting, and helps to get the sense of the meeting in an intelligent and expeditious manner. Further, a well arranged agenda prevents much confusion and irritation through members speaking on insufficient facts. It is generally advisable to consult the chairman of the meeting in preparing the agenda.

If ordinary routine business is being transacted, notes of the decisions arrived at may be made on the agenda, particularly when a wide margin or space is left for that purpose; but it is generally advisable to have a rough minute book, so that, when necessary, a detailed and more correct record of the proceedings might be taken.

The agenda should be filed and kept for reference, and, if bound, should form a separate volume, and not be placed with the minutes.

Clause (c).—See notes under S. 27.

Clause (d).—Under this head rules are prescribed how the proceedings are conducted; how the motions are moved and discussed; how amendments are proposed and discussed. The rules on the subject follow definite lines which are almost common in all the bye-laws made by various committees. The following summary of the rules for meetings given by Blackwell in his "Law of Meetings" is reproduced here and may be taken as a model of such rules. The rules of municipal committees in conflict with any of these rules will have to be given effect to. It will be noticed that the rules of the various committees are framed somewhat on these lines:—

1. If at the appointed hour there be a sufficient number present to make a meeting, the person (if any) entitled should take the chair, but if there be no such person present, then a chairman for that meeting should be chosen by those present.

2. The general authority of the chairman to manage and control the meeting should be loyally respected, and a person, even if speaking, or desiring to speak, should sit down if the chairman rises to say anything.

3. On taking the chair, the chairman should call for order and cause the notice convening the meeting to be read, or himself briefly state the object of the meeting.

4. The chairman should himself read or cause to be read letters of apology for non-attendance and other correspondence.

5. The minutes (if any) of the last meeting (if any) should be read and put to the meeting for confirmation, and signed by the chairman, who puts the motion for confirmation to the meeting.

Note.—No discussion on minutes should be allowed, except as to whether they are or not a correct record of what took place at the meeting in question.

6. If no special resolution to vary the order of proceeding be passed, the rest of the business should be transacted, subject to statutory directions, in the order in which it occurs in the agenda paper, but an amendment should, irrespective of its position on the agenda paper, be taken during the discussion of the question it proposes to amend.

7. Every principal motion should be relevant to some part of the business which the meeting has met to transact.

should be written or printed, and signed by the mover. If not seconded, it does not become a question and cannot be debated, and the next business should be called on. But if duly seconded such motion becomes a question which the chairman should propose to the meeting for discussion, and, failing or after discussion, put for decision.

Note. --The chairman should not veto discussion upon a matter expressly mentioned in the notice convening the meeting, otherwise mandamus may be obtained, as in *Rer. v. Marylebone Licensing Justices*, *Times*, April 5, 1922; 46 L. J. Jo. 133.

8. To enable the chairman to decide upon its relevancy or propriety, every amendment, whether of the original question or of another amendment, should be in writing and signed by the mover. It should be in order, relevant to, and show its effect upon, the question or amendment it proposes to amend. It should be moved and seconded, and then becomes a distinct question, which should be put to the meeting afterwards for decision. If there are several amendments of one question, they should be called on in the order in which they affect that question. No amendment may be moved respecting a question, or part of a question, already accepted by the meeting.

Note.—The observance of these rules must not be insisted upon too strictly. For example, in *re Horbury Bridge Coal &c. Co.*, (1879) 11 Ch. D. 109, the appellants took the point that the amendments was not seconded. Lord Justice James asked: "If there was any law of the land that at a meeting of shareholders a motion cannot be put unless it is seconded? I am not aware of any. No doubt it is the practice of the House of Commons." Sir George Jessel, M. R.: "And that practice is commonly followed at meetings." Osborne Morgan Q. C. *amicus curiae*; "In the House of Commons every motion does not require to be seconded, and an amendment does not." JESSEL, M. R.: "I think the objection that the amendment was not seconded cannot prevail, it being admitted that it was put and voted upon." The appellants then took the further point that there was no proposer, but Lord Justice James said, "In my opinion if the chairman put the question without its having been proposed or seconded by a body, that would be perfectly good."

9. The Formal Motions, *viz.*, "the Previous Question," "that the meeting proceed to the Next Business," "Adjournment," and the "Closure" need not be in writing, but must be moved and seconded and put to the meeting, upon which they become distinct questions. It is, speaking generally, for the chairman to accept or not to accept the closure. The Previous Question may not be moved when an amendment is under discussion, but the other formal motions should not supervene one upon another, and if any discussion be allowed it should be of a very limited character.

10. By leave of the meeting any motion may be withdrawn before it has been put for decision.

11. Subject to the closure each person should be allowed as far as practically possible, to make one speech upon each distinct question upon which discussion is allowed.

12. In the absence of any rule to the contrary, the mover and seconder of any motion are deemed to have spoken upon such motion, unless they make it clear when moving or seconding that they do so merely, thus reserving their right to speak at length at a later stage.

13. The chairman may call upon intending speakers in such order as he pleases; but the meeting may at any moment, when the chairman is about to exercise his right to call, the chairman ought to call upon the supporters and opponents of a resolution impartially.

14. A point of order is either an alleged irregularity in what a speaker is saying at the moment or an allegation that motion on the agenda is defective, *e.g.*, *ultra vires*. A person arising to a point of order should at once be required by the chairman to state succinctly the nature of the point. Such a point may be taken, whether the person taking it has already spoken or not.

15. Any person who has already spoken may forthwith, if the actual speaker gives way, or, if not, at the end of that speaker's speech, briefly speak again to remove a misconception as to a material part of his former speech, that is, he may make a "Personal explanation."

16. The mover of the original question should be allowed to reply briefly to the arguments used by his opponents.

17. Every speaker should rise, address the chair, and stand while speaking. His remarks should be spoken, not read, should be relevant to the question, reasonably brief, neither obstructive nor full of repetitions. He should be deferential to the chairman, respectful to the meeting, and not wantonly offensive to any person present or absent. He should not use offensive personal allusions, contemptuous, insulting, or threatening language, or impute improper motives to, or make groundless charges against, his opponent. He should not use disloyal or seditious language, and should avoid referring to cases *sub judice*.

18. After the reply the question should be put for decision forthwith. Every question should be decided by a majority of votes. The votes to be taken by a show of

hands in the first instance. One hand one vote. The chairman's declaration of the result to be *prima facie* decisive but if not accepted should be challenged at once and division or poll claimed. If not challenged at once the chairman's declaration is to be conclusive, the chairman's declaration may be impeached.

Note — Where, however, a particular majority is required, the chairman's declaration that a resolution has been carried when there has been no such majority is not unimpeachable. Thus (in *Rex. v. Trali Urban District Council*, (1913 Ir. K. B. 59; 4 Glen's Loc. Gov. Case Law, 27), on May 6, 1911, a council resolved by 10 votes to 8 that salaried positions under the council "including that of two clerks at present vacant," be filled by competitive examinations. On July 21, 1911, the council resolved, by 12 votes to 5, that the candidate to be elected town clerk must have passed a qualifying examination, and that the previous resolution be altered accordingly. On December 4, 1911, the council resolved, by 10 votes to 7, that there be no such examinations, and by 10 votes to 5, that a certain candidate be appointed. It was held, on an application for a writ of *mandamus* directing the council to appoint a clerk, that the rule must be made absolute, on the ground that, as only 17 members were present during the vote on December 4, there was not the two-third majority which was necessary for rescinding resolutions, overruling the contention that previous resolutions were *ultra vires* as interfering with the discretion of the council at future elections. And in an other Irish case, *Rex. v. Donovan* (1911 45 Ir. L. T. 24; 2 Glen's Loc. Gov. Case Law, 56), out of 49 members present at an election of a Mayor, 22 voted for A, 21 for B, and did not vote at all. It was held that the provision (in the Municipal Corporation [Ireland] Act, 1840, 3 and 4 Vict. c. 108. Ss. 83 & 92), that "all acts done by the council may be done and decided by the majority of the members who shall be present at any meeting, the whole number at such meeting not being less than one third of the whole council," required a majority for the candidate elected of all the numbers present; and that, as there was no such majority the election was void. The demand for a poll need not be in writing; see *Rex. v. Mayor of Dover*, (1903) 1 K. B. 668; 19 T. L. R. 255, which was an application for a writ of *mandamus* to the Mayor of Dover calling upon him to show cause why he should not hold a poll of the owners and ratepayers of the borough. A meeting of owners and ratepayers was held under Schedule III, r. 6, of the Borough Funds Act, 1872, for the purpose of obtaining their consent to the promotion of a Bill to enable the corporation to carry out a scheme and raise money for the purpose of acquiring the existing undertakings for lighting the town of Dover by electricity. The Mayor presided and declared the resolution carried. A Mr. Bottle then demanded a poll, and the applicant, Mr. Bradley, said that he would second the demand if necessary. The town clerk said that it was not necessary that there should be a seconder and that the demand for a poll had been assented to; the meeting then closed. Six days after the meeting Mr. Bottle withdrew his demand for a poll and Mr. Bradley insisting upon his right to have a poll taken, the

Mayor said that he after the withdrawal was advised that a poll could not legally be held to allow a poll to be held of the original demand, and therefore declined must be made and be held. Lord Alverstone, C. J., said: "This rule Act, 1872, is absolute. Schedule III, r. 6, of the Borough Funds that such question be decided by a poll of owners and ratepayers"; there is nothing to suggest that the demand must be in writing, or that it must be seconded. The rule must be construed with and ratepayers the subject matter to which it is applied. The owners ing that a poll may be made and leave the meeting, thinking demand if a poll will be held. It is unnecessary to decide whether the that in the case made by one person only may be withdrawn. It is clear intention of present case this gentleman went to the meeting with the another ratepayer demanding a poll, and that when it was demanded by treated as a demand. He said that he would second it; this ought to be prohibition of seconding demand. It would be going in the teeth of the reason of one owner or owners and ratepayers by the Schedule if by person, who has withdrawn his demand for a poll another one. I can see that those asked for a poll were prevented from getting demand a poll. No reason why several of those present should not be withdrawn. I am by no means clear that a demand for a poll can opinion on it, after the meeting has separated, but I express no Justice Dwyer said: "I agree." Mr. Justice Ridley said: "I agree." Mr. closed to the public. "I am of the same opinion. Personally, I am inclined to think that the demand cannot be withdrawn after it has been accepted."

19. If on a division or poll being taken the votes recorded, including that of the chairman, are equally divided the chairman shall be given a second or casting vote.

20. Any objection to the validity of the decision of any question should be made and insisted upon at once. If not it should be deemed to have been waived.

21. An invalid resolution may be cured subsequently. Thus when a parish council (on April 5) passed an invalid resolution dismissing their clerk and at a subsequent meeting (on June 12) passed a resolution appointing some one else to act as "temporary" clerk for the ensuing year at an annual salary to be paid half-yearly, it was held that this second resolution was either a "confirmation" of the first or a discharge of the existing clerk "by reason of the fact that his place was filled by some one else": *Longfield Parish Council v. Wright*, (1918), 16 L. G. R. 865.

The debate on any question may be interrupted by the moving and seconding of the following motions:—

(1) Amendments. (2) The previous question. (3) To proceed to the next business. (4) That the question be now discussed. (5) Adjournment either of meeting or of session.

(1) **Amendments.**—Amendments are alterations proposed to be made in the terms of original questions by persons who are not satisfied merely with affirming or negating the original question. In this connection the term "amendment" is used in two senses. The ordinary sense of the term "amendment" is an alteration intended from the point of view of the mover of the amendment, to improve the original question, but the term is now extended to an alteration so drastic as to amount to the proposal of a wholly different question. An amendment in the ordinary sense may take the form of a proposal (1) to omit certain words from ; or (2) to insert certain words in; or (3) to omit certain words from and replace them by others in any part of the original question; (4) to add words to the original question.

An amendment in the extended sense of the term usually assumes the form of a proposal to omit all the words of the original question except the prefatory "That" word in order to replace them by the terms of a counter-motion. For example, on July 20, 1906, Mr. Morley, the Secretary of State for India, moved and the Speaker proposed to leave the main question, the following: "That Mr. Speaker do not sit in the chair etc. (for committee on East India accounts)." Mr. Keir Hardie moved an amendment: To leave out from the word "That" to the end of the question, and add the words "in view of the responsibility of Parliament in reference to the Government of India, and in order to provide for a more effective control over Indian questions, it is expedient to place the salary of the Secretary of State for India on the estimates—instead thereof."

An alteration that merely proposes to negative the original question is not an amendment and ought not to be allowed; the term question itself implying, as already mentioned, the possibility of a negative as well as of an affirmative decision. The proposed alteration must also be reasonably relevant to the original question, and except in the extended sense of the term "amendment" must not render the original question as altered unintelligible. The time for moving an amendment is the interval between the moment when the chairman invites the meeting to discuss the original question and the moment when he finally puts the question to the vote. After question put, no amendment may be moved. Amendments must be moved and seconded like original questions and, after discussion, put to the meeting as substantive questions, to which an amendment may also be moved. If an amendment be not seconded, it falls to the ground, and as a matter of course cannot be discussed.

When an amendment has been moved, seconded, put to the vote and passed by a majority of those present at the meeting any further amendments to the original question can deal only with that part of the original question which is left unamended by the first amendment. Consequently, when there are several amendments they should as far as possible be taken in the order in which they would affect the terms of the original question. No amendment can be proposed to any part of the original question which the meeting by a majority of votes has already adopted. When an amendment to an amendment is proposed the original amendment should be treated as an original motion and dealt with accordingly. An amendment should be in writing, and stated so as to show its effect upon the original question or amendment.

(2) **Previous question.** - The "previous question" is so called because it is a distinct question propounded during the discussion of the main question and requiring a previous decision, that is, a decision, before the main question can be put to the vote. It temporarily prevents the main question being put, and, in order to keep it distinct from the closure, the form of previous question now generally used is a motion "That the main question be *not* now put." If this motion be carried, the main question cannot be put on that day, but may be brought forward at a subsequent meeting. But if the previous question be negatived, the main question must be put at once. The previous question may be moved and seconded by any person who has not already spoken, but the mover has no right of reply. If not seconded, the motion lapses, but if seconded, it becomes a distinct question, upon which persons who have already spoken may speak, and the discussion upon it may be adjourned. As has been already pointed out, it can only be moved when the original question is before the meeting, and therefore not during the discussion of an amendment, but when the question of amendment has been determined, the previous question may then be moved. The previous question cannot itself be amended but it may be superseded by a motion for adjournment of the meeting.

(3) **Motions to proceed to next business.** - "That the meeting proceed to the next business." As with the motion last discussed, the object of this motion is to prevent a decision from being pronounced on the main question. It may be moved even when an amendment is before the meeting; and, if carried, the main question is entirely superseded.

(4) **Gag or the Closure, or Motion "That the question be now put."**—The closure, or motion "That the question be now put," is a device for securing a speedy decision on a point or question that has been reasonably discussed, or discussed for a specified time. It is generally moved and seconded without speech; may not be discussed, and must be put forthwith. Sometimes the chairman has a discretion as to accepting the motion. Some closure rules reserve to the mover of the original question the right of reply.

In *Wall v. The London and Northern Assets Corporation*, (1893) 2 Ch. 469, one of the grounds of complaint was that "the chairman had applied the closure." It seems that at an extraordinary general meeting of the Assets of Company held on March 22, 1898, called for the purpose of approving a certain agreement, after the chairman had made a speech, and one member had spoken against, and one member in favour of, the agreement, a fourth member began to speak. Thereupon shouts of "vote" arose, and the chairman accepted and put to the meeting a motion to closure the debate, which was carried by twenty-four to two. The chairman then put the original resolution, and it was carried by thirty-five to three. When the matter came before the Court of Appeal the Master of the Rolls, speaking of this, said: "The only new one is about the closure. It appears there was discussion about this matter at a meeting of the shareholders of the Assets Company, and after having heard the views—I do not say of all those who opposed but of one or two of them—the meeting came to the conclusion that they had heard enough and did not want to hear any more, and thereupon the chairman declared the discussion closed. That is said to be a matter calling for the interference of this Court. I do not think so. I think it would be a very bad precedent that we should interfere in such a case." And Lord Justice Chitty said: "As to the closure, I think that if we laid down that the chairman, supported by a majority, could not put a termination to the speeches of those who were desirous of addressing the meeting, we should allow a small minority or even a member or two, to tyrannize over the majority. The case has been put by Mr. Cozens-Hardy as the terrorism of the majority. If we accepted his proposition, we should put his weapons into the hands of the minority, which might involve the company in all-night sittings. That seems to me to be an extravagant proposition, and in this particular case there seems to have been nothing arbitrary or vexatious on the part of the chairman or of the majority."

(5) **Adjournment.**—This term is applied both to an adjournment of the meeting itself, and to the adjournment of the discussion of a particular question.

An adjournment of the discussion of a particular question may be either (1) for a fixed time, or (2) for an indefinite time.

An adjournment of a meeting necessarily involves a discontinuance of the discussion, but an adjournment of the discussion on a particular subject does not necessarily involve a discontinuance of the meeting. Power to meet and discuss necessarily involves power to adjourn in the several senses of the term.

Clause (f).—It will be observed that the committees are authorized to frame bye-laws as to appointment of sub-committees and as to the duties to be performed by such committees. Under this clause any rules authorizing such sub-committees to exercise any powers under the Act will be *ultra vires*. If the sub-committees are to be empowered to exercise any powers that can only be done under S. 33, in the bye-laws framed under this clause by various municipalities this distinction has been lost sight of. For instance, under S. 39 only the committee has power to employ officers and servants. This power can be delegated to sub-committees or president or other executive officers. But without this delegation bye-laws of some committees empower sub-committees or certain officers to make appointments carrying certain salaries. Such bye-laws are *ultra vires*. It must be remembered that the discharge of a duty under the Act is not the same thing as the exercise of a power thereunder (6 I. C. 431). Similarly bye-laws empowering sub-committees to make certain expenditures or to enter into contracts of certain values are inconsistent with the provisions of the Act.

So far as sub-committees are concerned the Act does not contemplate any division of powers between the committee and its sub-committees. The function of the sub-committees is only recommendatory and is not final till sanctioned by the committee. The sub-committees go into the details of every question and formulate their opinion in the form of a report to the committee and are not hampered by formal rules of debate. (*See* "Indian Municipality" by H. T. S. Forrest, pp. 12–19.) When the recommendations are accepted by the committee, the acts of the sub-committees become valid as from the time they were done upon the ordinary principles of ratification by principal of the acts of his agents: *Firth v Staines*, (1897), 2 Q. B. 70. For further notes *see* pp. 26–28 Arnold's "Law of Municipal Corporations," 6th Edition.

Executive Officers Act.—Section 4 sub-clause (d) provides as follow:—

- (d) No bye-law inconsistent with this Act shall be made by the committee in exercise of the powers conferred by S. 31 of the Municipal Act and, if any such bye-laws have been made, they shall be deemed to have been cancelled to the extent to which they are thus inconsistent.

In municipalities to which this act is extended, bye-laws already made which are inconsistent with the Executive Officers Act, 1931 shall be deemed to be cancelled and the future bye-laws inconsistent with the said Act cannot be framed under clauses (f) and (g). Grant of executive powers to sub-committees, members, president or vice-president or to any officer other than Executive Officer will be inconsistent with this Act. Similary under Cl. (h) bye-laws *re* appointment and removal of its officers by the committee will be inconsistent with the Executive Officers Act in regard to officers and servants carrying certain salaries.

Admission of Press and Public.—The bye-laws under this section generally provide for admission of reporters and the public to the meetings of the committees unless some important matter requiring their exclusion is under consideration. There is no inherent right of the public or press to attend such meetings. In the *Mayor, etc., of Tenby v. Masson* (C. A. 1908, 1 Ch.—457) the defendant, a burgess and ratepayer of a town to which the Municipal Corporations Act, 1882, applied, asserted his right to be present at the meetings of the council of the borough (other than committee meetings) in his capacity of (1) a ratepayer of the borough; (2) reporter of a newspaper owned by him and published in the town and in the alternative as a member of the public. The corporation of the town claimed a declaration of the council's right to exclude persons not members of the council (which the defendant was not) from their meetings and for an injunction restraining defendant from trespassing and being present at meetings of the council.

Held—That a meeting of the council of a municipal corporation was not a public meeting in the sense that any member of the public had a right to attend. That there was no ground for implying against a municipal corporation a right which was not expressed in any statute nor supported by any authority; and that the defendant had therefore no such right as was asserted by him either as a burgess or as a member of the public; nor had he the right to attend

as a newspaper reporter without the express or implied permission of the council.

In England the decision has been greatly modified by Local Authorities (Admission of the Press to Meetings) Act, 1908.

The press or the public is not admitted to sub-committee meetings.

Privileges in speeches.—When members meet to discharge their duties as members the occasion is privileged as regards untrue defamatory statements made, in the exercise of his duty by one member to others, provided the occasion is not used dishonestly or abused.

In the *Royal Aquarium, etc., Society v. Parkinson* (1892) 1 Q. B. 433, Lord Esher, M. R., said: "Then comes the question whether this was a privileged occasion. Whereas in this case, a body of persons are engaged in the performance of the duty imposed upon them, of deciding a matter of public administration, which interests not themselves, but the parties concerned and the public, it seems to me clear that the occasion is privileged. Therefore, though what is said amounts to a slander, it is privileged, provided the person who utters it is acting *bona fide*, in the sense that he is using the privileged occasion for the proper purpose and is not abusing it. It is sometimes said that he must be acting *bona fide* and not maliciously; but I do not think that, that way of expressing the rule is quite exhaustive or correct. I think the question is, whether he is using the occasion honestly or abusing it. If a person on such an occasion states what he knows to be untrue, no one ever doubted that he would be abusing the occasion. But there is a state of mind, short of deliberate falsehood, by reason of which a person may properly be held to have abused the occasion, and in that sense to have spoken maliciously. If a person from anger or some other wrong motive has allowed his mind to get into such a state as to make him cast aspersions on other people, reckless whether they are true or false, it has been held, and I think rightly held, that a jury is justified in finding that he has abused the occasion."

In *Pittard v. Oliver*, (1891) 1 Q. B. 474 it was held that the presence of reporters would make no difference and the occasion will still be privileged. In this case the reporters were present with the permission of the Board, but if a person under a duty to make a defamatory statement to other person under a corresponding duty to hear it, invites outsiders to come in and listen and they come in, Lord Esher said he should be inclined to hold "that it would not become his duty to refrain from making his statement to the proper

person but that there would be evidence of malice in his making it in presence of others who might promulgate it."

However, in the case of *Parsons v. Surgey*, 1864, 4 F. and F. 247 Cockburn, C. J., directed the jury that where a shareholder of a railway company called a meeting of shareholders, and invited others, especially reporters, to attend, the meeting made defamatory statements about a director of the company, "the matter was certainly one of great interest and importance to the shareholders, and the discussion or publication of the results to them would have been excused. It would not be a privileged communication, because others besides the shareholders were invited." Therefore, as both Cockburn, C. J., and Fry, L. J., suggest, it is better to discuss such matters *in camera*.

Further, as regards newspaper reports the occasion may not be privileged. In *Popham v. Pickburn* (1862), 7 H. and N. 891, delivering the judgment of the court Baron Wilde said: "But no case has decided that the reports of what takes place at the meeting of such a body as this vestry are privileged; indeed, the case cited in the argument is an authority that they are not." And in *Purcell v. Sowler* (1877), 2 C. P. D. 215, the facts were that at a meeting of the Board of Guardians of the Altringham Poor Law Union *ex-parte* charges (unfounded in fact) were made against the plaintiff, the medical officer of the union workhouse at Knutsford, of neglect in not attending the pauper patients when sent for. The defendants published in a Manchester newspaper, of which they were the proprietors, a fair and accurate report. Defendants claimed that judgment ought to be entered for them on the ground that the report was privileged by the occasion. At the trial in the Divisional Court, and in the Court of Appeal the defendants failed to establish privilege. Cockburn, C. J., said: "The managements of the poor and the administration of the poor law in each local district are matters of public interest. In this management the medical attendance on the poor is matter of infinite moment, and consequently the conduct of a medical officer of the district may be of the greatest importance in that particular district, and so may concern the public in general. I therefore cannot concur with the Common Pleas Division in thinking that the matter to which the present libel relates was not a matter of public interest within the rule as to privileged occasion. The true question in the present case is whether, though the subject matter was of general interest, the occasion on which the words were uttered was privileged so as to protect the *bona fide* publication of the report. But here we have to deal with the case of a body of very limited jurisdiction, and as to which it

cannot be asserted that publicity is essentially necessary or usual. It is quite clear that the meetings of poor law guardians are not necessarily public; they have full right to close their doors, and although the public are generally admitted, yet when charges are to be made affecting private character the more proper course would be to close the doors and hold the discussion *in camera*. In the present case that course unfortunately was not adopted; the reporter of a newspaper was admitted, and he communicated what had been said to the newspaper, and so the libel was published. Was the occasion privileged? There is no authority for holding it to be so, and I think it was not. A preliminary inquiry which might be, and ought to be, carried on with closed doors is not the proper subject of a public report."

Right to rescind resolution.—Rules generally provide for the reconsideration of questions settled once. These rules should be strictly followed. Ordinarily all deliberative assemblies have a right to do and undo, consider and reconsider, as often as they think proper at their meetings and it is the result only which is done. The right of reconsidering lost measures inheres in every body possessing legislative powers unless forbidden by special regulation. But there is this important restriction that if the rights of third parties are likely to be interfered with municipal corporation cannot rescind its former decision. Where a council passes an *ultra vires* and void resolution, re-consideration and rescision thereof, however, is not necessary.

Rules.—*Reconsideration after final disposal.* Where the question of appointing a paid assessor was raised as an amendment which was lost. Before the expiry of six months' time fixed before which the question finally disposed of could not be reconsidered, the question was again raised as a substantive proposition which was carried. *Held* the appointment of a paid assessor had not been finally disposed of when the amendment was lost. 37 C. 44; 3 I. C. 1.

Delegation of Powers.

32. (1) In the case of municipalities of the second class, the powers and functions of the local Government under Section 12 in regard to the appointment of members of committees under sub-section (1) of section 13 under clause (b) of Section 14, under Sections 15 and 17 and under sub-section (2) of Section 31, and under section 41, and in the case of notified areas, the powers and functions of the local Government under Section 242 in regard to the appointment of members of committees may be delegated by the local Government to [any person].

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(2) In regard to powers of functions delegated to him under this section, every Commissioner shall have the same authority as is given by this Act to the local Government, and the delegation shall continue until revoked by the local Government.

(3) A delegation under this section may be of all or any of the powers and functions aforesaid, and may be made generally in regard to either all the municipalities of a particular class, within the division of the Commissioner, or it may be made particularly in regard to certain municipalities only.

(4) The delegation may be by name or by office.

Notes.

S. 41 of the old Act.

The first clause of the section was substituted by the Amendment Act, II of 1933. The delegation can only be affected with regard to second class municipalities.

Analogous Law: —

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| S. 381, Behar and Orissa Municipal Act, 1922 | S. 14, Central Provinces Municipal, Act II of 1922. |
| S. 29A, Bengal District Municipal Act, 1884. | S. 37, Madras District Municipal Act, V of 1920. |
| S. 544, Bengal Municipal Act, XV of 1932. | |

Recent Changes.—The words in *Italics* in sub-section 1 have been added by section 14 of the Amendment Act III of 1933; while the words in brackets have been substituted for the words “the Commissioner of the Division.”

Delegation of certain powers and functions of Committees.

33. (1). Notwithstanding anything in this Act, every committee may, subject to the provisions of section 46, with the previous sanction of the local Government in the case of committees of the first class, and of the Commissioner in the case of those of the second class, by resolution, delegate:—

- (a) to the president, a vice-president, the secretary or a sub-committee all or any of the powers conferred upon the committee by sections 39, 72, 75, 77, 97, 98, 101, 105, 109 (1), 110, 113, 114, 115, 115-A, 117, 118, 119, 122, 124, 126, 127, 128, 129, 130, 131, 140, 142, 143, 145 (b) and (c), 166, 169 (c), 170, 170-A (1) and (2), 172 (2), 173, 176, 191, 195-A, 203 to 208 (both inclusive), 210, 211, 212, and 220 ;
- (b) to the Medical Officer of Health all or any of the powers conferred upon the committee under sections 39, 105, 109, 113, 114, 115, 115-A, 116, 117, 118, 119, 125, 126, 128, 131, 142, 143, 144, 145, [clauses (b) and (c)], 146, 149, 155, 156, 157, 166, 182, 203, 204, 205 [clause (b)], 206, 208, 211, and 212;

- (c) and to the Inspector-General of Civil Hospitals, Civil Surgeon of the district or any officer of the Department of Public Instruction or Public Health all or any of the powers conferred upon the committee under S. 39;
- (d) and to the Municipal Engineer the powers conferred upon the committee under S. 195-A, and under section 195, except to the extent that composition under that section shall require the sanction of the committee

in respect of all or particular classes of cases arising under these sections, and for the whole or any part of the municipality, and may, by resolution, withdraw the powers so delegated.

(2) The delegation by the committee of any power under sub-section (1) may be made subject to the condition that all or any orders made in pursuance of such delegation shall be subject to the right of appeal to, or revision by, the committee within such period as may by bye-law be prescribed.

Notes.

There was no corresponding section in the old Act of 1891. The sections corresponding to this section and the following section were first introduced by Act II of 1911. Power of delegation was extended to secretary and Medical Officer of Health by the Amendment Act II of 1923. The Amendment Act III of 1933 has recast the section in its present form.

Powers under S. 39 can now be delegated to officers specified in sub-clause (c) while powers under Ss. 195 and 195-A can now be delegated to municipal engineer.

The delegation has now been made subject to the condition that the committee may by bye-law provide for a right of appeal or revision to itself.

Analogous Law:—

S. 44, Bengal District Municipal Act, 1884.

S. 52, Bengal Municipal Act, XV of 1932.

S. 49, Behar and Orissa Municipal Act, 1922.

S. 46, Bombay Municipal Boroughs Act, 1925.

S. 37, Bombay District Municipal Act, III of 1901.

S. 20, Calcutta City Municipal Act, III of 1923.

S. 22, Cantonment Act, II of 1924.

Ss. 24, 27, 220 & 221, Central Provinces Municipal Act, II of 1922.

S. 235 (v), Rangoon City Municipal Act, 1922.

Ss. 112 & 297 (q) United Provinces Municipalities Act, 1916.

S. 20 A, Punjab District Board Act, 1883.

Power under delegation must be exercised by delegates.—Where a board constituted by an Act of Parliament is authorized by it to delegate any of its powers to a committee, the

powers so conferred upon the committee must be exercised by them acting in concert, and it is not competent to the committee to apportion amongst themselves the duties so delegated to them ; and one of them acting alone, pursuant to such apportionment, cannot justify his acts under the Act of Parliament. *Cook v. Ward* (1877), 2 C. P. D. 255 ; 36 L. T. 892.

Delegation without express power is not possible.—In the absence of express power given under the section the general principle that public powers or trusts devolved by law or charter upon the council or governing body to be exercised by it when and in such manner as it shall judge best cannot be delegated to others, would have applied. This principle is based on the general rule of law that one who is himself a delegate cannot delegate his power to another. Town councils and smaller local authorities are delegates in the sense (1) that the legislature has delegated to them certain powers and duties which otherwise could only be exercised by the legislature itself and (2) that they are the elected delegates of ratepayers. In cases where there is no powers of delegation, there will be nothing wrong in submitting any matter for enquiry and report to a sub-committee when the final resolution is taken by the committee.

Where a statute expressly or by implication leaves the determination of certain matters to the body corporate created by it, the latter has no power to delegate its authority on matters within its competence to a third person. 38 I. C. 848.

A public body, whether the Executive Government or a corporation, entrusted by the legislature with the duty of making rules, cannot relieve itself of the responsibility and depute other agencies to discharge the duty.

So where a conservator of ports published an order prohibiting boats to enter ports at certain signals when he had no such authority to issue such an order and where such authority was vested only in local Government and Government had not been authorized to invest any other authority to make the rule the conviction for disobeying the direction of the conservator was set aside. 17 M. 118.

Scope of delegation.—Delegation once made does not cease till it is withdrawn. 38 I. C. 305.

Valid delegation.—In order to be valid the delegation must comply with the express provisions of the section. A verbal or general delegation without resolution and consent as required will not be valid. *Cf.* 20 Cal. 448.

Powers under S. 152 cannot be delegated to president. In the case of municipalities of the second class, delegation to be valid must be made with the previous sanction of the Commissioner. 4 Lah. 120 ; 1924 Lah. 80.

Note.—Business bye-laws of Lahore Municipality authorizing committees or officers to make certain appointments carrying certain monthly remuneration are not valid unless powers are expressly delegated under S. 39 and such delegation requires in the case of first class municipalities the sanction of local Government.

Delegation of power to decide whether a suit should be brought.—The secretary of a notified area committee brought suits against certain persons for rent. On objection being taken that the institution of the suits had not been sanctioned by the committee, it was pointed out that the committee had passed a resolution delegating its right to the secretary to decide whether a suit shall or shall not be brought against any person and that the suits had been instituted in pursuance of that resolution:

Held that as there was nothing in the Municipal Act which empowered a municipal committee to delegate the right to decide whether or not a suit should be brought to a particular person, the action of the corporation was *ultra vires* and the present suits were therefore bad because admittedly they were brought by the secretary without reference to the corporation.

Held, further that though the action of the secretary might have been ratified by resolutions passed by the committee after the suits were filed, such ratification was of no avail as suit must be decided to be good or bad on the day when it was instituted and it could not be ratified subsequently. 1932 Lah. 388, 137 I. C. 253.

Oral delegation of powers.—Where the accused, a licensed public conveyance driver, was convicted for failure to produce his license and it was found that his license had been suspended by an officer in exercise of powers delegated to him only orally by his superior: *held* the conviction of the accused was illegal. The delegation of powers under the Act can be effected but in a case where there has been an exercise of a power under alleged delegated authority it is clearly necessary that the delegation should be clearly shown. The question of such authority should not depend on a general verbal order but it should be by written orders giving references to the various sections of the Act and specifying particular powers and duties delegated. *Cf.* 1926 Bom. 77, 91 I. C. 886.

Executive Officers Act.—In Municipalities to which this Act is extended the section shall be deemed to have been omitted and instead S. 4 (b) of Executive officers Act applies as given below :—

(b) The powers conferred and duties imposed upon, the functions vested in, and the objections to be tendered and notice given to, the committee under the sections of the Municipal Act mentioned in schedule 1, shall not be exercised or performed by, vested in, or be tendered or given to, the committee but may be exercised or shall be performed by, or shall vest in, or shall be tendered or given to, the Executive Officer, provided that —

- (i) the power conferred by S. 39 of the Municipal Act shall not be exercised by the Committee in respect of the appointment of any officer or servant of the committee to a post for which the monthly remuneration exceeds Rs 45 in the case of the Municipality of Lahore and Rs. 25 in the case of other municipalities, and in respect of the power of removal or dismissal of any officer or servant whose monthly remuneration exceeds Rs. 45, provided that the Executive Officer shall dismiss an employee if required by the committee to do so ;
- (ii) the power to revise the valuation and assessment conferred by S. 65 of the Municipal Act and the power to amend the assessment list conferred by sub-clause (1) of S. 67 of the Municipal Act shall be exercised by a sub-committee consisting of the Executive Officer and two members of the committee appointed by the committee for the purpose ;
- (iii) the power of the Executive Officer to withhold the grant of a license for any of the trades or purposes specified in Ss. 121, 122, of the Municipal Act or to withhold written permission under S. 124 of the Municipal Act may by bye-law be made subject to revision by the committee ;
- (iv) the exercise or discharge by the Executive Officer of any power, duty or function thus conferred, imposed or vested in him, shall be subject to such restrictions, limitations and conditions as may be imposed by any rules made by the local Government under the Municipal Act upon the exercise or discharge of such power, duty or function by the committee ;

SCHEDULE I.

(Sections of the Punjab Municipal Act 1911.)

Sections 39, 63, 64, 65, 66, 67, 73, 74, 75, 76, 77, 80, 81, 82, sub-section (3) of S. 96, sub-section (1) of S. 97, sections 99, 100, 101, 102, 105, 109, 115, 115-A, 116, 117, 118, 119, sub-sections (1) and (2) of section 121, sections 122, 124, 125, 126, 127, 128, 129, 130, 131, 134, 135, sub-section (1) of section 140, sections 142, 143, clauses (b) and (c) of section 145, sections 149, 154, 156, 166, clause (c) of section 169, sections 170, 170 A, sub-sections (2) of section 172, sections 173, 176, 177, 182, 189, sub-sections (1), (2) and (4) of section 189, sections 191, 195-A, 197-A, 220 and sub-sections (3) of section 223.

34. (1). With the previous sanction of the local Government, and subject to such conditions as the local Government may prescribe, a committee may appoint the elected members for any one or more wards along with such appointed members as the Government may approve, to be a sub-committee for the management of the ward or wards, and may delegate to the sub-committee all or any of the powers of the committee to be exercised within the ward or wards.

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(2) The sub-committee shall, if necessary, from time to time appoint one of its members to be chairman of the sub-committee.

Notes.

This section like S. 33 is new.

Analogous Law.—S. 53 of Bengal Act III of 1884, S. 72 of Calcutta City Municipal Act III of 1923.

Under the section ward sub-committee may be invested with full powers of the committee to be exercised within the ward or wards.

35. (1) On the occurrence or threatened occurrence of any sudden accident or event involving or likely to involve extensive damage to property or danger to human life or grave inconvenience to the public, the president or, in the absence of the president or during the vacancy of his office, a vice-president may, if in his opinion there is an emergency necessitating action before the matter can be considered by the committee, direct the execution of any such work or the doing of any such act which the committee is empowered to execute or do, as the emergency shall in his opinion justify or require, and may direct that the expense of executing such work or doing such act be paid from the municipal fund:

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Provided that every such action taken under this section shall be reported to the committee at its next meeting.

(2) The president or vice-president shall not act under this section in contravention of any order of the committee.

(3) The president or in his absence or during the vacancy of his office a vice-president may prohibit, until the matter has been considered by the committee, the doing of any act which is in his opinion undesirable in the public interest: provided that the act is one which the committee has power to prohibit.

(4) No direction given in this section shall be questioned in any Court on the ground that the case was not one of emergency.

Notes.

S. 26 of the old Act.

Recent changes.—S. 16 of the Amendment Act, III of 1933 has substituted the present section for the old S. 35. The old section was found to have been misused and the amended section has been considerably altered. The scope for the exercise of powers under S. 35 has been considerably restricted. In spite of this restriction the Civil Courts have no authority to interfere even if the president or vice-president gives directions or spends the municipal fund in cases not covered by the opening words of the section—such interference may be effected under the authority exercising control under Chapter XII.

Analogous Law:—

S. 44, Bengal District Municipal Act, 1884.	S. 25, Cantonment Act, II of 1924.
S. 51, Bengal Municipal Act, XV of 1932.	S. 163, Central Provinces Municipal Act, II of 1922
S. 31 (d), Bombay Municipal Act, 1925.	S. 15, Madras District Municipal Act, V of 1920.
S. 64 (3) (c), Bombay City Municipal Act, III of 1888.	S. 152, Rangoon City Municipal Act, 1922
S. 31, Burma Municipal Act, III of 1898.	S. 70, United Provinces Municipalities Act, 1916.
S. 88, Calcutta City Municipal Act, III of 1923	Ss. 19 & 13, Punjab District Board Act, 1883.

Executive Officers Act.—In municipalities to which this Act is extended, S. 35 has been amended as follows by Act II of 1931:—

S. 35 (1). On the occurrence or the threatened occurrence of any sudden accident or unforeseen event involving or likely to involve extensive damage to any property of the committee or damage to human life the President or the Executive

Officer or in the absence of the President or during the vacancy of his office a Vice-President may direct the execution of any work or the doing of any act which the committee is empowered to execute or do as the emergency shall in his opinion justify or require:

Provided that every such action taken under this section shall be reported to the next following meeting of the committee.

- (2) The President or the Executive Officer or in absence of the President or during the vacancy of his office a Vice-President shall not act under this section in contravention of any order of the committee.
- (3) The President or the Executive Officer or in the absence of the President or during the vacancy of his office a Vice-President may prohibit, until the matter has been considered by the committee, the doing of any act which is, in his opinion, undesirable in the public interest:

Provided that the act is one which the committee has power to prohibit.

- (4) No direction given under this section shall be questioned in any court on the ground that the case was not one of emergency.

Abuse of Emergency powers.—The indiscriminate use of the old section had come in for a good deal of criticism from the public. To a certain extent this criticism was justified though it could not be said that greater use was being made of this section under the regime of non-official presidents. The section, however, did not invest the presidents with all the powers of the committees under the Act as generally appeared to have been assumed. It was not uncommon to find acts done or expenditure incurred which would not bear discussion in an open meeting of the committee. If powers had been used in strict accordance with the intention of the legislature then the occasions calling for the exercise of these extraordinary powers would have been found to be rare indeed and it would not have been an occurrence of every day in the ordinary course of municipal administration. When a direction was given or expenditure incurred under the section the committee was often powerless to undo what had been done even if it had been of opinion that there was no occasion for the use of the emergency powers.

The Dobson Committee exposed the evils of indiscriminate use of the powers exercised under the old section and the report of the said committee probably led to the alteration of the section.

Exercise of powers by committees.—Under the Municipal Act, an action to be taken, or order to be passed, or notice to be issued, in the exercise of powers conferred, must be taken, passed, or issued, respectively, by the committee, by means of resolutions passed at meetings convened and conducted in accordance with the provisions of Ss. 25 to 29 inclusive.

S. 35 of the Act, however, is an exception. The condition precedent to the coming into operation of the provisions of this section is that the case must be one of emergency and the safety or service of the public must necessitate the exercise of the extraordinary power it confers.

The plea of urgency will, however, be of no avail to justify action under the section if it results in a sacrifice of private rights, unless the urgency be of such a character that any delay would frustrate the object in view, and unless further the act be necessary for the service or safety of the public. *Cf.* 6 I. C. 431, 6 N. L. R. 53.

Proviso.—The question arises, can the committee interfere with the direction given by the president? It is claimed that the object of the reporting is simply to inform the committee of the cases in which the president has exercised powers under S. 35 and that the committee is simply to note what has been directed by the president. There can be no doubt that one object of the proviso at least appears to be to make these orders as the orders of the committee. If powers under the section have been rightly used there cannot be, from the very nature of the thing, any repudiation, because when the act has been done or any work executed it passes the stage of repudiation. But Cl. (2) makes it clear that the report is not meant for simply registering the orders of the president. The committee while noting the direction can prohibit the president from exercising the power in future in a similar case. Again, when the case is reported, the committee can certainly repudiate it, if it finds that the act done or work executed is in contravention of orders already given. When the direction does not relate to any act done or any work executed, I do not see why the action if not accepted by the committee should be upheld because it purports to have been made under S. 35.

Consequences of failure to report to the next meeting.—Another defect noticeable in the use of this section is that the directions given by the president were seldom reported to

the next meeting. Consequences of failure to report are not indicated. It is said that the failure is a mere irregularity cured by S. 37, but S. 37 does not seem to be applicable to irregularities under S. 35. When the direction is given in the interests of safety or service of the public and the act has been done or work has been executed failure to report may be taken as a mere irregularity which may be cured by the report being made at some subsequent meeting. However, the necessity of reporting is a condition subsequent to the action taken, and the failure to report to the committee cannot make the direction void. But if as is sometimes the case the direction is not in strict accordance with the provisions but affects third persons who are required to comply with the order of the president issued under the exercise of powers under S. 35, the failure to report cannot be treated as a mere irregularity and such third persons may refuse to comply with the orders and I do not think they will be liable to prosecution for failure to comply with the notice issued under president's orders if the provisions of the section have not been strictly comply with. Under the amended section, however, no direction given or act done can result in non-compliance.

Proof of emergency.—S. 35 deals with certain extraordinary powers of the president or vice-president in cases of emergency. In the absence of any proof that the matter was urgent a notice purporting to be under S. 125 of the Act, signed by the secretary and quoting the authority of the president requiring certain drainage improvements was held to be invalid and the person served with such notice could not be punished for disobedience. *Cf.* P. R. 26 of 1905 Cr.

Clause 4.—This clause was enacted in view of the opinion expressed in 26 P. R. 1905 Cr. above. Courts are now debarr-ed from questioning the direction on the ground that the case was not one of emergency. It will, I presume, still be open to courts to decide whether the direction was at all necessary for the service or safety of the public or whether there were circumstances as detailed in the opening words of S. 35 justifying action under S. 35.

Absence, meaning of.—Absence means non presence at a particular place and at a particular point or period of time. If a particular place and time has been fixed for the purpose of doing a particular act and the president being still the president is not at that place at the time he must be regarded as absent. It is impossible to construe the expression 'absence' as either absent from office or absent from munici-

pality or other territorial division. *Cf.* 1927 Mad. 935, 103 I. C. 821; *see also* 47 Mad. 369.

Absence of president.—The mere absence for a few days of the president from his district on a visit to Madras does not necessarily vest in the vice president the power of appointing members of the board. But even if it did, the fact that the vice-president did not make any appointment and the president returned to his district and signed again in his district list of appointments of these members and directed it to be posted on the board where, and not in the Fort St. George Gazette, it had by the Act to be posted shows a perfectly proper exercise of the president's powers of appointment. 1924 Mad. 561, 73 I. C. 98; 47 Mad. 369.

The power to revise a list of assessment under S. 67 cannot be exercised by a president or vice-president under S. 35 as it is not a case of emergency. *Cf.* 7 Mad. 65.

Scope of section 35.—Under the amended act it is evident that S. 35 empowers president, vice president or executive officers to do such acts as involve expenditure.

Clause (3).—The committee is empowered under the following sections to prohibit the doing of certain acts:—106, 116, 120, 149(a), 159, 180, 184.

Joint Committees.

Joint
Committees

36. A committee may concur with any other committee, or with any district board, or with any cantonment authority, in appointing out of their respective bodies a joint committee for any purpose in which they are jointly interested, and in delegating to any such joint committee any power which might be exercised by either or any of the committees, boards or authorities concerned, and in framing and modifying regulations as to the proceedings of any such joint committee and as to the conduct of correspondence relating thereto.

Notes.

S. 27 of the old Act.

Analogous Law:—

- S. 37-A, Bengal District Municipal Act, 1884.
- S. 87, Bengal Municipal Act, XV of 1932.
- S. 51, Behar and Orissa Municipal Act, 1922.
- S. 47, Bombay Municipal Boroughs Act, 1925.
- S. 39(a), Bombay District Municipal Act, III of 1901.
- S. 32, Burma Municipal Act, III of 1898.

S. 45, Cantonment Act, II of 1924.

S. 29, Central Provinces Municipal Act, II of 1922.

S. 26, Madras District Municipal Act, V of 1920.

S. 110, U. P. Municipalities Act, 1916.

S. 24, Punjab District Board Act, 1883.

English Law:—

Ss. 279 & 286, Public Health Act, 1875.

Defects in constitution and irregularities.

37. No act done or proceeding taken under this Act shall be questioned on the ground merely of the existence of any vacancy in any committee or joint committee, or on account of any defect or irregularity not affecting the merits of the case.

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Notes.*Analogous Law:—*

- S. 38, Bengal District Municipal Act, 1884.
- S. 92, Bengal Municipal Act, XV of 1932,
- S. 57, Behar and Orissa Municipal Act, 1922.
- S. 57, Bombay Municipal Boroughs Act, 1925.
- S. 38, Bombay District Municipal Act, III of 1901,
- Ss. 51 & 52, Bombay City Municipal Act, III of 1888.
- S. 33, Burma Municipal Act, III of 1898.
- S. 79, Calcutta City Municipal Act, III of 1923.

- S. 55, Cantonment Act, II of 1924.
- S. 23, Central Provinces Municipal Act, II of 1922.
- Ss. 36 & 401, Madras City Municipal Act, 1919.
- S. 32, Madras District Municipal Act, V of 1920.
- Ss. 22 & 23, Rangoon City Municipal Act, 1922.
- S. 113, United Provinces Municipalities Act, 1916.
- S. 55, Punjab District Board Act, 1883.

English Law:—

- S. 262, Public Health Act, 1875.

Committee not validly constituted.—It is not the appointment of members that constitutes the municipal board, its constitution is created by the Act and the Notification. The eventuality occurring at some time or another of all the seats not being filled is contemplated by the Act. The act of a municipal board would not be illegal, even if a vacancy, occurring after its formation, remained unfilled. Every seat need not be filled even at the first constitution of the board in order to make it a legally constituted body. A corporation may exist by common law, by Royal Charter, by authority of Parliament, by prescription, or by custom, and not otherwise. "A corporation is not invalid merely because at the moment of its creation it does not in fact exist, as long as it is capable of coming into existence." Where the corporation consists of a head and members, they may be appointed after the foundation. 44 M. L. J. 161; 1923 Mad. 360 and 1933 Lah. 435; 14 Lah. 461.

Failure to take Oath of Allegiance.—Failure of a person who has been elected or nominated to the committee to take the oath of allegiance does not affect the existence of the committee. Such person is a member of the committee even though he has not been taking part actually in the meetings. 14 Lah 461; 1933 Lah. 435.

Irregularity.—S. 37 means that any failure to comply with the prescribed formalities in respect of notice will not affect the validity of the proceedings if the said failure can fairly be described as a mere informality, and the words “mere irregularity” means in effect anything which, though contrary to the Act or rules, has not in fact occasioned any injustice or prejudice. Where all the members except two received formal notice of a meeting which allowed them very little less than the full prescribed period and the two who did not receive such formal notice nevertheless had notice and raised no objection, and no one appeared to have been prejudiced in the least:

Held that this was a case of a mere informality within the meaning of S. 37 which did not invalidate the meeting. *Cf.* 1930 Bom. 554; 54 Bom. 902.

Inviting opinion by circulation. -- Where there is no meeting of the building sub-committee and all that the engineer did was to circulate the papers to a majority of members of such building committee who endorsed on them their opinions that the application should be refused; *held* that the expedient of circulating the papers to individual members is highly inexpedient and the defect in question was not curable or cured by S. 37. *Cf.* 1926 Nag. 281, 92 I. C. 796.

Resolution not put separately.—At a meeting of the commissioners, two resolutions were moved and seconded. The first resolution was that the question of a general revision of assessment be postponed for a year in view of the economic distress prevailing in the country. The second resolution was that the general revision of assessment of holdings be undertaken without delay as it was overdue. The resolutions were not put separately as they ought to have been according to the bye-laws of the municipality but were put as alternative resolutions and the numbers in favour of each were ascertained: *Held* that although the procedure adopted was irregular, the irregularity was not sufficient to render null and void all actions taken on the basis of the resolutions passed. 1929 P. C. 272; 33 C. W. N. 1039; 119 I. C. 622.

Defect in signature.—The mere fact that the secretary signs a notice instead of the chairman does not affect the merits inasmuch as it is a mere irregularity which is cured by S. 37. *Cf.* 30 I. C. 643.

Notice not giving prescribed time—whether rules under S. 31 mandatory.—*See* 1930 Oudh. 434.

Notice defective—No provision making such a meeting illegal.—The regulations do not expressly provide that

if the notice of a meeting is not issued by post or that the margin of the time is less than that prescribed the meeting convened in those circumstances or the act done at the meeting shall be void.

The use of the words " at any time " in sub-section (2), S. 25, means that the meetings sanctioned by the sub-clause may be held in any month and at any time other than the time fixed for the meeting prescribed by sub-section (1). In other words a meeting under sub-section (2) could properly be held at any hour of the day previous or subsequent to the hour of the monthly meeting. *Cf.* 1930 Oudh. 434.

The intention of the legislature should be construed as mandatory if the aim and object of the statute would be clearly defeated if the direction to do a thing in a particular manner is not strictly observed.

Where the prescription of an Act relates to the performance of a duty by a public officer the breach of such prescription, when it does not cause any real injustice does not invalidate the act done under the Act and therefore such prescriptions are merely directory. 39 Mad. 485 *Ref.*

An election is not invalidated by the non-observance of the regulation for the conduct of elections, unless the non-observance was of a character contrary to the principles of the Act, under which the regulations are framed, or might have affected the result of the election.

If reasonable time is allowed to the person on whom the notice is served for the purpose of doing the act required of him by the notice, and if the notice has been served in one of the modes prescribed by the Act, the intention of the legislature is satisfied. *Cf.* 1930 Oudh. 434.

Officers and Servants.

38. (1) Every committee shall, from time to time, at a special meeting, appoint, subject to the approval of the local Government in the case of a municipality of the first class and of the Commissioner in the case of a municipality of the second class, one of its members, or any other person, to be its Secretary, and may, at a like meeting, suspend, remove, dismiss or otherwise punish any person so appointed;

(2) The committee may, and shall when so required by the local Government, approved at a special meeting, a person or persons appoint by the local Government to be its Medical Officer of Health or Engineer, and may, assign

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to him or them such remuneration as it may think fit, and may, at a special meeting remove or dismiss any person so appointed:

Provided that a Medical Officer of Health towards whose emoluments a contribution is made by the local Government shall not be appointed or dismissed without the previous sanction of the local Government.

(3) When a member of the committee is appointed secretary he shall receive no remuneration in respect of his services. When any other person is appointed secretary, the committee may, with the previous sanction of the Commissioner, assign to him such remuneration as it may think fit.

Notes.

S. 29 of the old Act.

Recent changes.—The old section was amended by Act II of 1923 and the word “remuneration” was substituted for word “pay” but the recent Punjab Amendment Act III of 1933, (*vide* S. 17) has substituted Cls. 1 and 2 for the original section and Cl. 2 becomes Cl. 3. The approval of local Government is also now required for the appointment of medical officer of health and engineer. In the case of secretary the committee has also been empowered to dismiss, suspend or punish him though by S. 14 of the General Clauses Act the power of appointment includes power of dismissal or suspension.

The word “remuneration” has been substituted for the word “pay” in this as well as in S. 39 by Amendment Act II of 1923. The change is introduced to set at rest the doubts as to the power of committees to sanction allowances in addition to pay for such of their officers and servants as they are authorised to appoint under Ss. 38 and 39.

Analogous Law:—

- S. 46, Bengal District Municipal Act, 1884.
- S. 67, Bengal Municipal Act, XV of 1932.
- S. 38, Behar and Orissa Municipal Act, 1922.
- S. 46, Bombay District Municipal Act, III of 1901.
- S. 77, Bombay City Municipal Act, III of 1888.
- S. 34, Burma Municipal Act, III of 1898.
- S. 51, Calcutta City Municipal Act, III of 1923.

- S. 25, Central Provinces Municipal Act, II of 1922.
- Ss. 70 & 71, Madras District Municipal Act, V of 1920.
- S. 39, Rangoon City Municipal Act, 1922.
- Ss. 37, 66 & 67, United Provinces Municipalities Act, 1916.
- S. 17 (1), Proviso, Punjab District Board Act, 1883.

English Law:—

- S. 189, Public Health Act, 1875.
- S. 17, Municipal Corporation Act, 1882.

Remuneration.—It means an equivalent paid for any service or recompense or payment for services rendered.

Joint appointment to the office.—The section does not empower committees to appoint more than one person to the office of secretary. Attempts of certain committees to appoint two persons to this post to maintain communal balance in municipal services have to be deprecated; so is the case of joint appointment of health officer or engineer.

Officers and servants.—As already observed, a municipal corporation being an artificial person can only act through the medium of real persons. In the first place, these persons will be the members themselves and secondly, officers and servants of the corporation. At common law, an office was defined as a right to exercise a public or private employment and to have the fees thereof whether public or private. The term "office" embraces the ideas of tenure, duration, emoluments and duties. It is the duty of an office and its nature that makes a public officer and not the extent of his authority. An office must be distinguished from mere employment. The position of an officer appears to involve some discretion of authority and is to be distinguished from that of a mere servant whose only duty is to obey orders, though it is not always easy to draw the line. In one view, they are all agents of the corporation, the extent of the powers varying in each case. The relation that exist between a corporation and an employee or servant is a contractual one, while in the other case, it is not so. A municipal officer is one who holds for a time a permanent municipal position of trust and responsibility with definite municipal powers, duties and privileges; and these offices can only be created or abolished by statute. In general, it may be stated that a person whose duties are fixed by statute or law or any bye-law is an officer. Public offices are a public trust; and the persons to be appointed shall be selected solely with a view to the public welfare. All the acts creating municipal corporations in British India make distinct provision regarding the appointment of the various municipal officers, clerks and servants, regarding their qualifications, their pay and pension, leave and other allowances and provident funds, regarding their suspension, punishment, resignation, retirement, and dismissal and these provisions should be strictly followed. Aiyangar on "Municipal Corporations in British India," pp. 122-3.

Tenure of Office.—There is no fixity of tenure. In the absence of any agreement to the contrary every officer or servant is only entitled to one month's notice before discharge, under S. 45 of the Act. The section standing alone will make the officers and servants hold their office at pleasure and will be liable to dismissal at any time. Cf. 42 I. C. 513.

Powers, rights and duties.—As observed by Buckley, L. J., in *Peel v. London and N. W. Ry Co.*, (1907) 1 Ch. 5 at p. 21, it is the right and duty of the officers of a corporation to inform and guide the corporators in matters affecting the corporate interests. A corporation will be deemed to have notice of all matters which come to the knowledge of its officers, and which it is their duty to communicate to it. But the powers of officers vary considerably according to the nature and constitution of the corporation. As the authority of these officers is created by law, their power and authority is special and limited and not general; and their right to act in a specific instance must be ascertained and determined by an inspection of the law interpreted strictly. And these officers and servants can only perform their official duties within the limits of the powers of the corporation they represent and can only exercise their powers and duties during their term of office. Official powers to be legally exercised must be specifically and expressly given. The doctrine of implied powers does obtain in only so far as it may be necessary to hold that a public officer is given the right by implication to exercise such powers as may be necessary to enable him to do an act, the performance of which is expressly and specifically granted or enjoined. Aiyangar's "*Law of Municipal Corporations*," p. 127.

Personal liability of officers and servants for contracts and torts.—Where a municipal officer or servant in the regular performance of his official duties or functions enters into contract relations with third parties, the presumption in law is that no personal liability was intended to be assumed. Where the intent is clear, however, that the officer or servant is acting for himself and not for the corporation which officially he represents, the contract will be considered a personal one and not binding on the corporation.

An officer may, like an ordinary agent, be personally liable if he acts, without authority, even though he describes himself as an agent. If he has no authority and knowing it, he assumes to possess authority, he may be liable to an action of deceit; and having no authority but honestly believing and representing that he has, he renders himself liable to an action upon a warranty of authority. In the case of negotiable instruments intent to exclude liability must appear on the face of the instrument.

For the negligent performance or the non-performance of a discretionary duty owed to the public, there can arise no personal liability on the part of a public officer or employee; but where the duty is one not discretionary in its character and due to a particular individual and its performance results in the special and particular advantage or

benefit to that individual he is responsible for the proper performance of the duty, if a cause of action can arise because of such neglect or failure. The corporation cannot be fixed with liability for torts committed by its officers in the general course of their business. *Ibid*, pp. 129-130.

Liability of committees for contracts and torts of officers or servants—A municipal corporation is liable, just as is a private corporation or a natural free person, upon contracts properly assumed by the corporation. There may be said to be three requirements necessary for a valid and enforceable contract by a municipal corporation. In the first place the contract must be within the scope of the powers of the corporation; that is to say, the corporation must be authorised, either expressly or impliedly by its charter or other statute by virtue of which it had come into existence, to make such a contract. In other words, no officer or agent can make a binding contract, if such contract is wholly beyond the express or implied powers of the corporation. In the second place, the contract must be made by the proper officers or agents. The officers or agents through whom the corporation acts in assuming the contract liability must be within the authorised scope of their powers in making the contract on behalf of the municipality. Finally if the manner in which the municipal corporation must make its contracts is expressly and imperatively prescribed by mandatory statutes, the contract must be made according to the manner prescribed by law in order to be valid. If these requirements are observed, the municipal corporation is liable to private persons upon its contracts to the same extent as a private corporation or a natural person.

The principle which makes it unlawful for a member of a municipal council to take part in any proceedings in which he is personally interested applies also to executive and administrative officers; and a contract entered into by a municipal board with one of its own members is void, or at least voidable. So a municipal corporation may rescind a contract which it has made, if it appears that the officer who represented the municipality received a commission from the other party to the contract.

Where torts are committed by the officers or agents of the public corporation in the exercise of those discretionary and legislative or statutory powers which are delegated to them by the legislature, when those officers or agents in exercising those powers, or by failure to exercise them, incidentally commit torts against natural persons or private corporations, the municipality is wholly free from liability.

In exercising the statutory powers or in exceeding them, the officer cannot be considered to have been the agent of the corporation so as to render it liable.

It is settled law that where the duty to be performed is imposed by law and not by the will of the party employing the agent, the employer is not liable for the wrong done by the agent in such employment. 39 Mad. 781. Aiyangar's "Law of Corporations in British India," pp. 131-132.

The municipal corporation is, however, liable for the tortious acts and omissions of its officers or agents when those acts or omissions are violations of absolute and ministerial duties.

A ministerial act is "one which a person performs in a given state of facts in a prescribed manner, in obedience to the mandate of legal authority, without regard to, or the exercise of his own judgment upon the propriety of the acts done." *Flournoy v. City of Jeffersonville*, 17 Ind. 169. A ministerial officer is under constant obligation to discharge the duties of his office with reasonable skill and care; and if he fails in these and damage ensues to one specially interested in the discharge of such duties, he becomes liable. Conversely, as it is the duty of a purely ministerial officer to do, not to reason why, he incurs no liability for injuries suffered without negligence or corrupt intent on his part. *Smith's Corporation*, Vol. I, p. 222, quoted in Aiyangar's "Municipal Corporations" at p. 132.

Public servants. Under S. 19 of the Act all officers and servants are public servants within the meaning of S. 21, Indian Penal Code.

Limitation for suit claiming pay or damages for wrongful dismissal.—When a municipal servant is dismissed under statutory powers his suit for damages will be governed by Article 2 of the Limitation Act. *Cf.* 30 I. C. 390; 39 Bom. 600.

Employment
of other offic-
ers and
servants.

39. Subject to the provisions of this Act and the rules and bye-laws made thereunder, a committee may, and if so required by the local Government shall, employ other officers and servants, and may assign to such officers and servants such remuneration as it may think fit, and may suspend, remove, dismiss, or otherwise punish any officer or servant so appointed.

Notes.

S. 30 of the old Act.

Recent changes.—The present section has been substituted for the old section, *vide* S. 18 of Punjab Municipal

Amendment Act, III of 1933. Power of suspension and punishment has also been specifically given and the local Government has been empowered to require the employment of officers and servants. The power of suspension and punishment had been held to be included in the power of dismissal and suspension while under S 14 of the General Clauses Act the power of appointment includes power of dismissal and suspension.

Analogous Law:—

- | | |
|---|--|
| S. 46, Bengal District Municipal Act, 1884. | S. 25, Central Provinces Municipal Act, II of 1922. |
| S. 66, Bengal Municipal Act, 1932. | Ss. 85, 86 & 90, Madras City Municipal Act, 1919. |
| S. 37, Behar and Orissa Municipal Act, 1922. | Ss. 70 & 73, Madras District Municipal Act, V of 1920. |
| S. 34-A, Bombay Municipal Boroughs Act, 1925. | Ss. 29 & 31, Rangoon City Municipal Act, 1922. |
| Ss. 74, 78 & 79, Bombay City Municipal Act, III of 1888 | Ss. 68, 69, 71, 74 & 75, U. P. Municipalities Act, 1916. |
| S 35, Burma Municipal Act. III of 1898. | S. 27, Punjab District Board Act. 1883. |
| S. 51, Calcutta City Municipal Act, III of 1923. | <i>English Law:—</i> |
| | S. 19, Municipal Corporation Act, 1882. |

This duty very important.—The appointment of its officers is perhaps one of the most difficult and is certainly one of the most important duties of the committees. Efficient administration depends on the efficiency of officers and servants. Unfortunately in appointing servants and officers considerations of the efficiency of the candidates very seldom enters the minds of the members with the result that administration suffers owing to incompetency of officers and servants.

Remuneration.—See Notes under S. 38.

Delegation.—Powers under this section can be delegated and without such delegation the appointment of all servants of whatever grade vests in the committee and without such delegation bye-laws under S. 31 empowering sub-committees or certain officers to make certain appointments or dismissals will be illegal.

Executive Officers Act.—Where this Act is extended powers under S. 39 can only be exercised by Executive Officer under scope of powers granted by S. 4 of the said Act.

Definite appointment necessary.—A municipality took over the management of a school belonging to another institution. The municipality then gave notice to the teachers that their services would not be

required after a certain date. One of the teachers was willing to continue in the service and the municipal chairman authorized him to appoint a peon as a night watchman:

Held that this would not constitute the appointment of the teacher in the municipal service and that in the absence of definite appointment he could not be held to be a servant of the municipality. 86 I. C. 509; 1925 Mad. 943.

Wrongful Suspension.—A temple committee constituted under Act XX of 1863 has the power of suspending or dismissing temple trustees for sufficient cause, but the power must be exercised at a meeting duly held for the purpose.

An order of suspension, therefore, passed on the opinions of the members recorded on papers sent to them for circulation is illegal and *ultra vires*, especially if there were dissentients.

Where the order itself is *ultra vires*, it is not open to the defendants in a suit for damages for wrongful suspension to plead sufficiency of grounds for their action.

A temple committee is liable in damages for the wrongful suspension or dismissal of a trustee, but not as a corporate body.

The liability is confined to the individual members who were parties to the suspension or dismissal. 43 I. C. 205.

Power of dismissal includes all lesser powers.—Power of dismissal must necessarily include all other powers on the principle that the greater includes the less. The power of dismissal necessarily gives power to reduce. Then as to censure and reprimand, it follows from the power of dismissal that the Crown has also the power of censuring its officers. It may at times be unnecessary to dismiss an officer. A censure or reprimand may be a sufficient penalty. 27 Bom. 189.

Power of dismissal does not include power of suspension.—It has been held that statutory power of dismissal does not include power of suspension. 19 I. C. 353, 37 Mad. 55. *See Contra* 21 Mad. 179.

Notice for suspension.—No notice is required for an *ad interim* suspension pending inquiry into a complaint against a servant entitled to hold office during good behaviour or for life.

Where the order of suspension passed on an *archaka* by the trustee is not passed as a punishment of which he was

found guilty but was an *ad interim* order preventing him from performing his office pending the investigation of the charges of misconduct against him, the order of suspension is not invalid simply because it was passed without notice to the *archaka*. 10 I. C. 548.

Dismissal of servants.—A statutory power to appoint, suspend or dismiss officers or servants is vested in the municipalities by reason of S. 39. But the provisions of the rules framed by local Government regulating the dismissal of servants constitute a statutory restriction or limitation to the power given by statute to the municipality to dismiss their servants. These rules are manifestly for the protection and benefit of the officers and servants of the municipality and the existence of such rules is inconsistent with the position that a servant of a committee is a servant who may be dismissed at pleasure at any time without notice and without reason. *Cf.* 1929 Sindh 69, 113 I. C. 389.

Jurisdiction of court to question dismissal—Damages for wrongful dismissal.—In a suit for damages for wrongful dismissal brought by an officer of Karachi Municipality against the municipality, once the court is satisfied that the plaintiff's dismissal has been in accordance with the rules and bye-laws of the municipality it has no jurisdiction to probe any further into the question. If, however, the court finds that the plaintiff's dismissal has been wanton and in utter disregard of rules and bye-laws of the municipality, the municipality would forfeit the protection and privilege afforded to them by statute and the plaintiff would be entitled to succeed as in ordinary suit between master and servant for wrongful dismissal. 1929 Sindh 69.

Misconduct, what is.—There is no fixed rule of law defining the degree of misconduct which will justify dismissal from service. It will depend on the nature of the misconduct and the nature of the duties to be performed by the person dismissed. 1929 Sindh 69.

Measure of damages.—Every master has an inherent right to dispense with the services of his servant after reasonable notice. As to what is reasonable notice depends upon the servant's employment. When this is determined the measure of damages is what the servants would have earned in the employment of his master during the period of notice. The damages for the dismissal cannot include compensation for the manner of the dismissal, for injured feelings or for the loss he may sustain from the fact that the dismissal makes it more difficult for him to obtain fresh employment. 1929 Sindh 69, 113 I. C. 389.

Note.—Period of notice is prescribed in the Punjab under S. 45 of the Act.

Under S. 39 and the rules made for the dismissal of municipal servants, municipal committee or the sub-committee with delegated powers under S. 33 is constituted a domestic tribunal having the right to appoint or dismiss a servant without retaining under it the ordinary law regulating the dismissal of a servant by his master. But this right is subject to certain safeguards, *viz.* (1) that there must be evidence before the tribunal on which it can reasonably find that the ground of dismissal stated in the statute is in fact proved before it, and (2) secondly, that any inquiry before it must be conducted in accordance with the principles of natural justice, and that in particular the accused must be given an opportunity of being heard in his own defence and of cross-examining the opposing witnesses and also of calling his own witnesses, and (3) thirdly, that the decision must not be based on purely capricious grounds. The matter further is not left open to be reviewed in a court of law, nor does an appeal lie from the decision unless the servant can make out that the above safeguards have been violated. *Cf.* 126 I. C. 324, 32 Bom. L. R. 463; 1930 Bom. 320.

Suit for damages for wrongful dismissal of servant.—Where an employee in municipal service, who has been dismissed by the municipality sues it for damages on the ground that he was dismissed without notice given or cause shown, then he would have no cause of action. The municipality is not required by their statute to give notice or show cause. But if he alleges that the municipality in dismissing him has not conformed to its own rules, it is an allegation which discloses a cause of action and which the court has jurisdiction to consider and decide.*

Where the statute vests a discretion in the municipality the court must be satisfied that the discretion has been exercised according to the limitation imposed by the statute. But the municipality is not under an obligation to satisfy the court that their decision was reasonable and the court is not entitled to consider whether the said decision was justified. Where jurisdiction to decide a question has been conferred by statute upon what may be called a "Domestic Tribunal" that tribunal has jurisdiction to decide rightly or to decide wrongly. The decision of such a tribunal must be final. If it were found that persons who have a power of

* Punjab Municipal Act provides a notice of one month for discharge.

this description have in the course of their inquiry disregarded the procedure by the statute incumbent upon them, then the court might interfere. But if they had followed that procedure correctly court has no power to interfere and must accept their decision.

Per Mehta, A. J. C.: Where a person gets himself engaged in the service of a municipality he must be deemed to have agreed to abide by the law under which the municipality had to function. Where a party to a contract agrees that in case of any dispute arising out of the contract or in any matter concerning the contract he will abide by the decision of the party, he cannot afterwards be allowed to say that such decision is not binding upon him, being a decision by a person in his own case, unless it can be shown to be arbitrary or otherwise unjust. Hence a person in municipal service cannot insist on any limitations to the power of the municipality to dismiss him not provided for in that behalf by the Act or rules having the force of law. 1933 Sindh 93.

40. A Government official who has been continuously employed by a committee from the commencement of the Punjab Municipal Act, 1884, and who is in the employment of the committee at the commencement of this Act shall not be dismissed from that employment without the sanction of the local Government.

Dismissal
of Govern-
ment offi-
cials.

Notes.

S. 31 of the old Act.

Analogous Law:—

S 46, Bengal District Municipal Act, III of 1884.	S. 46 (j) (c), Bombay District Municipal Act, III of 1901.
S. 39(3), Behar and Orissa Municipal Act, 1922	S. 77 (3), Madras District Municipality Act, V of 1920.
S. 58 <i>pro.(c)</i> , Bombay Municipal Boroughs Act, 1925.	S 28 (3), U. P. Municipalities Act, 1916.

So far as removal of Government officials in the employ of municipal committees is concerned this section provides a limitation over the absolute power of dismissal or removal which committees possess over their servants.

41. If in the opinion of the local Government, any officer or servant of the committee is negligent in the discharge of his duties, the committee shall, on the requirement of the local Government, suspend, fine, or otherwise punish him; and if in the opinion of the local Government he is unfit for his employment, the committee shall dismiss him.

Power to
demand pu-
nishment or
dismissal.

Provided that the power conferred by this section shall not be exercised in respect of an Executive Officer appointed under the provision of the Punjab Municipal (Executive Officers) Act.

Notes.

Analogous Law. - Cf. S. 25(25) of Central Provinces Municipal Act, II of 1922.

Executive Officers Act.—The proviso in italics should be deemed to have been added in case of municipalities to which Executive Officers Act is extended.

S. 41 of Act III of 1911 was a new section. The present section has now been substituted by S. 19 of Act III of 1933. The section has been considerably altered. The old section is quoted below which will show how the new section has been altered. The right of appeal has also been taken away and otherwise the control of the local Government over municipal servants has considerably been increased:

“41. If, in the opinion of the Deputy Commissioner, or, where the Deputy Commissioner is a member of the committee, of the Commissioner, any officer or servant employed by the committee is unfit for his employment, the committee shall, on the requirement of the Deputy Commissioner or the Commissioner, as the case may be, dismiss him:

“Provided that the officer or servant or the committee may appeal to the Commissioner against a requirement made by a Deputy Commissioner, and to the local Government against a requirement made by a Commissioner and the decision of the Commissioner or the local Government, as the case may be, on any such appeal shall be final.”

Powers to prevent extravagance in establishments.

42. If, in the opinion of the Commissioner, the number of persons employed by a committee as officers or servants, or whom the committee may propose to employ as such, or the remuneration assigned by the committee to those persons or any of them is excessive, the committee shall, on the requirement of the Commissioner, reduce the number of those persons or the remuneration, as the case may be:

Provided that the committee may appeal against any such requirement to the local Government, and the decision of the local Government on any such appeal shall be final.

Notes.

S. 32 of the old Act.

Analogous Law.—S. 216 of Bombay Municipal Boroughs Act, 1925; S. 176 of Bombay District Municipal Act, III of 1901; S. 36 of Burma Municipal Act, III of 1898; S. 27 of

C. P. Municipal Act, II of 1922; S. 27 Proviso Punjab District Board Act, 1883.

By Ss. 41 and 42 the Government retains certain powers of control over municipal establishments. There is a constant danger of municipal administration becoming extravagant and municipal patronage being showered on unfit persons.

43. (1) If an officer or servant of a committee is a Government official, the committee may—

Pensions,
leave allow-
ances and
Provident
Fund.

- (a) if his services are wholly lent to it, contribute to his pension, gratuity, and leave allowances in accordance with any general or special orders of the Governor-General in Council in force for the time being ; and
- (b) if he devotes only a part of his time to the performance of duties on behalf of the committee, contribute to his pension, gratuity and leave allowances in such proportion as may be determined by the local Government.

(2) If an officer or servant of a committee is not a Government official, the committee may, subject to such conditions as the local Government may prescribe,—

- (a) grant him leave, absentee or acting allowance ; and
- (b) if his pay is less than twenty rupees a month, either permit him to contribute to a provident or annuity fund established under (c) or grant him a gratuity on retirement ; and
- (c) if his pay is over twenty rupees a month establish and maintain a provident or annuity fund, and compel him to contribute thereto.
- (d) where such a fund has not been established, or where such a fund has been established, but he has been contributing thereto for less than the whole of his service, grant him a gratuity or purchase or arrange for an annuity for him on his retirement.

(3) With the sanction of the local Government, the committee may give an extraordinary pension or gratuity—

- (a) to any officer or servant injured in the execution of his duty ;
- (b) to the family of any officer or servant who is killed in the execution of his duty or whose death is due to devotion to duty.

(4) A pension, gratuity or annuity shall not exceed the sum to which, under any general or special orders of the Governor-General in Council for the time being in force, such office or his family would be entitled if the service had been service under Government.

Notes.

Ss. 33 and 34 of the old Act with considerable alterations.

The section has been largely based on S. 42 of the N. W. P. and Oudh Act I of 1900 as amended by Act I of 1907.

The word "twenty" has been substituted for the word "ten" in Cl. 2 (b) in view of the general rise in pay.

Recent changes.— S. 20 of Punjab Amendment Act, III of 1933, has substituted sub-clauses (b) and (c) for the old sub-clauses (b) and (c). The old sub-clauses were in the following terms:—

(b) if his pay is less than twenty rupees a month, grant him a gratuity on retirement ;

(c) establish and maintain a provident or annuity fund and compel him to contribute thereto.

Analogous Law:—

Ss. 47 & 48, Bengal District Municipal Act, 1884.	Ss. 55, 56 & 57 Calcutta City Municipal Act, III of 1923.
Ss. 69 & 70 Bengal Municipal Act, XV of 1932.	S. 25, Central Provinces Municipal Act, II of 1922.
Ss. 38 & 39, (1) and (2) of Behar and Orissa Municipal Act, 1922	S. 88, 93 & 94, Madras City Municipal Act, 1919.
S. 58 (h) (2) & 158-A, Bombay Municipal Boroughs Act, 1925.	S. 77, Madras District Municipal Act, V of 1920.
S. 46 j h j b, Bombay District Municipal Act, III of 1901.	Ss. 35, & 135-VIII, Rangoon City Municipal Act, 1922.
S. 81, Bombay City Municipal Act, III of 1888.	Ss. 78-80 & 297 (d), United Provinces Municipalities Act, 1916.
Ss. 37 (1) & 38, 38A & 38B. Burma Municipal Act, III of 1898.	Ss. 28 and 29 of Punjab District Board Act, 1883.

Provident Funds Act.—The present Act governing such Funds is Act XIX of 1925. The Act applies to Government Provident Funds constituted by the authority of the Govern-

ment for any class or classes of its employees and to Railway Provident Funds. Under S. 8 of the above Act the local Government has power by notification in the local official Gazette to apply the provision of this Act to any Provident Fund established by any local authority for the benefit of its employees. If the Act is extended to any local authority then the Fund cannot be attached by any Civil Court. *See* 35 Cal. 641. The deposit retains its characteristic as compulsory deposit only so long as it is in Fund. 92 I. C. 673: The money in such Fund is exempt from attachment by creditors even after the death of the subscriber. 46 Cal. 962 1929 All. 417 (a).

Provident Fund Rules.—The Government has in the Account Code prescribed rules for the regulation of the Provident Funds. *See* rules in Chapter XVI of Municipal Account Code, 1930.

Government sanction for allowance—In a municipality, A was originally employed as a sanitary inspector. Three years later he was appointed secretary on a monthly consolidated pay of Rs. 75. Later on he applied to the committee to give him some allowance for doing the work of supervision of sanitation and the chairman of the Public Health Committee proposed that A should get Rs. 12 as monthly allowance for doing additional work. This proposal was ultimately confirmed by the municipal committee and A was accordingly paid this allowance. The payment of this allowance, however, was objected to by the auditor on the ground that it required sanction of the local Government. The committee applied for sanction but the Commissioner returned the application without forwarding it to the local Government. The committee thereupon sued A for the recovery of the allowance paid to him. *Held*, that assuming that sanction of local Government was necessary, the burden of obtaining it was on the committee and that unless the local Government was approached and it refused to accord its sanction, the payment already made to A could not be said to have been illegally received by him so as to give the committee a right to recover the amount from him.

General rules do not delegate to the Commissioner the power of local Government of according sanction but do not even authorize the Commissioner to withhold forwarding such a proposal and the action of the Commissioner refusing to forward to the local Government, the representation of the municipal committee for sanction is *ultra vires*. *Cf.* 1929 Nag. 213.

ension, &c.
case of
service part-
under
Government
and partly
under com-
mittee.

44. (1) If a person serving or having served under a committee has been or is transferred from or to the service of Government or is partly employed by the Government and partly by a committee, the committee shall contribute to his pension and leave allowances to the extent required by the rules in force for the time being made by the Governor-General in Council in this behalf.

(2) In the absence of a written contract to the contrary, the committee may dispense with the services of any such person by giving the local Government one month's previous notice.

Notes.

This section is new. It is based on S. 44 of N. W. P. and Oudh Act, I of 1900 as amended by Act I of 1907. Cl. (2) had been substituted by Amendment Act II of 1923.

Analogous Law.—S. 76 (b) of Bengal Municipal Act, XV of 1932; S. 78 of U. P. Municipalities Act, 1916.

Notice be-
fore dis-
charge

45. (1) In the absence of written contract to the contrary, every officer or servant employed by a committee shall be entitled to one month's notice before discharge or one month's wages in lieu thereof, unless he is discharged during a period of probation or for misconduct or was engaged for a specified term and discharged at the end of it.

(2) Should any officer or servant employed by a committee, in the absence of a written contract authorizing him so to do, and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the committee, he shall be liable to forfeit a sum not exceeding one month's wages out of any wages due to him, and if no wages, or less than one month's wages are due to him, he shall be liable to a penalty not exceeding wages for one month or an amount equal to the difference between one month's wages and the wages due to him, which shall be recoverable in the manner prescribed by S. 81.

(3) Should any sweeper employed by a committee, in the absence of a written contract authorizing him so to do and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the committee, or neglect or refuse to perform his duties or any of them, he shall be liable to imprisonment which may extend to two months.

(4) The local Government may, by notification, direct that, on and from a date to be specified in the notification, the provisions of sub-section (3) with respect to sweepers shall apply also to any specified class of servants employed by any committee whose functions intimately concern the public health or safety.

Notes.

S. 203 of old Act with considerable changes. Cls. (3) and (4) reproduce Cls. (2) and (3) of S. 203 of the old Act. The first clause has been extended to all servants. Cl. (2) is new and makes the duty of the committee reciprocal. See Report of the Select Committee on the Bill.

Cl. 2 has now been further amended by S. 21 of the Punjab Amendment Act, III of 1933. The portion in italics has been added to the existing sub-clause 2. In case there are no wages due to the employee or if the wages due do not represent one month's wages, then a penalty to make up the amount to one month's wages is recoverable and this can be done under S. 81 of the Act.

Analogous Law:—

S. 188, Bengal District Municipal Act, 1884.

S. 71, Bengal Municipal Act, XV of 1932.

S. 40, Behar and Orissa Municipal Act, 1922.

S. 45, Burma Municipal Act, III of 1898.

Ss. 376, & 496, Calcutta City Municipal Act, III of 1923

S. 178, Cantonment Act, II of 1924.

S. 26, Central Provinces Municipal Act, II of 1922.

S. 363, Madras City Municipal Act, 1919.

S. 318, Madras District Municipal Act, V of 1920

Ss. 36 & 210, Rangoon City Municipal Act, 1922.

S. 85, United Provinces Municipalities Act, 1916.

Voluntary resignation and compulsory dismissal.—In determining whether a person has resigned or has been compelled to resign the correct test is to find whether the acts and conduct of the servant evince an intention no longer to be bound by the contract, or whether the conduct of the employer amounts to a basic refusal to continue the servant on the agreed terms of the employment. In the latter case there is a wrongful dismissal and repudiation of the contract and the use of polite instead of peremptory language would not alter the conclusion. 1929 Sindh 69.

Tenure of office.—This section makes it clear that all offices under the municipal committee are held at pleasure. A month's notice or month's wages is all that is necessary for discharge of any servant. Government servants are governed by the provisions of Ss. 40 and 41. The servants or officers are also liable to removal without such notice in case of misconduct.

Striking work after insufficient notice.—The provisions are very drastic and require to be very carefully worked.

They are obviously enacted to meet the grave public danger which may arise from a sudden strike of sweepers in a town.

On 10th April ten sweepers sent a notice to the municipal board demanding an increase of pay. Having received no reply to this they on 20th April sent a further notice threatening to strike on 1st May unless their demands were granted. On 1st May they abandoned their work in accordance with the notice. The magistrate examined the health officer in the case of one of these and the latter stated that there was the danger of cholera epidemic.

Held, that they were rightly convicted under S. 45 (1). Cf. 1924 All. 188; 46 All. 41; 81 I. C. 143.

See also notes under S. 39.

Contracts.

authority to
contract.

46. (1) The committee of any municipality of the first class may, subject to the provisions of this Act, delegate to one or more of its members the power of entering on its behalf into any particular contract whereof the value of amount does not exceed five hundred rupees, or into any class of such contracts.

(2) No contract by or on behalf of any committee whereof the value or amount exceeds five hundred rupees shall be entered into until it has been sanctioned at a meeting of committee.

Notes.

S. 35 of the old Act.

Analogous Law:—

S. 37, Bengal District Municipal Act, 1884.

S. 103, Bengal Municipal Act, XV of 1932.

S. 64, Behar and Orissa Municipal Act, 1922.

S. 48 (3), Bombay Municipal Boroughs Act, 1925.

S. 49 (3) (b), Bombay District Municipal Act, III of 1901.

Cf. S. 69-70 of Bombay City Municipal Act, III of 1888.

Ss. 67 & 68, Calcutta City Municipal Act, III of 1923

S. 113, Cantonment Act, II of 1924.

S. 44, Central Provinces Municipal Act, II of 1922.

Ss. 78 & 80, Madras City Municipal Act, 1919.

S. 68, Madras District Municipal Act, V of 1920.

Schedule I, Ch. IV, Rangoon City Municipal Act, 1922.

S. 96, United Provinces Municipalities Act, 1916.

English Law:—

S. 174, Public Health Act, 1875.

Executive Officers Act. - This section shall be deemed to be omitted in municipalities where Executive Officers Act is extended—*vide* S. 1 of Schedule II to Act II of 1931.

Clause (1).—This is the only section which recognises the the power of delegation in favour of individual members in first class municipalities.

Clause (2).—The power to contract is given in S. 18 of the Act. The contract must be necessary for the purposes of the Act. A municipal corporation can only enter into such contracts as are within the scope of the objects for which it was incorporated. Any contract going beyond this limitation is *ultra vires*. It follows, therefore, that the governing body of a corporation cannot use the funds of the community in contracts for a purpose other than that for which the corporation was constituted. *Pickering v. Stephenson*, (1872) L. R. 14 Eq. 322.

It was held by the Calcutta High Court that a contract made on behalf of the Commissioners by a municipal subordinate in respect of a sum below five hundred would be binding on the Commissioners if such subordinate had authority to make it or the Commissioners subsequently ratified it but not otherwise. In such a case the Agent could not be sued unless he had contracted personally. 9 W. R. 209.

The provision of S. 46 of United Provinces Municipal Act that a contract involving an amount exceeding 500 rupees should be sanctioned by the board is not directory, but mandatory. *Cf.* 1926 Oudh. 388.

When a lease which is required to be sanctioned by the committee at a meeting, was made by the chairman, it was held to be *ultra vires*. Such a lease could not be validated by ratification such as acceptance of rent. 1923 Cal. 675, 37 C. L. J. 589, 75 I. C. 506.

Burden of proof.—The *onus* of establishing that a contract fulfils the requirements of the statute lies on the person asserting fulfilment. 1923 Cal. 675, 37 C. L. J. 589, 75 I. C. 506.

Auction sale.—There can be no doubt whatever that the sale by auction is a contract when the conditions of sale provide that the highest bidder shall be the purchaser; the person who makes the highest bid has a right of action against the seller on his refusing to act in accordance with the conditions.

The word "contract" as used in Ss. 46 and 47 of the Municipal Act must be taken in its ordinary meaning. Where a municipal committee sold certain grass by auction

to the plaintiff as the highest bidder and the sale was confirmed in a resolution of the municipality and the memorandum of auction was signed by plaintiff and vice-president and secretary of the municipality. *Held*, that contract as contemplated by Ss. 46 and 47 was complete. *Cf.* 1924 Nag. 227, 78 I. C. 1052.

Contract as entered different from contract as sanctioned.—Provisions requiring sanction of the committee to contracts are not merely directory but compulsory. A sanction given in a particular case cannot cover a subsequent contract when there are variations in parties and terms between the first contract and the subsequent contract. 1930 Bom. 414, 127 I. C. 491.

Sanction of contract.—The fact of the board passing a resolution that they had noted certain proceedings of a sub-committee cannot be construed as a resolution sanctioning contracts which were confirmed in the course of the proceedings of the sub-committee. *Cf.* 1926 Oudh 388, 99 I. C. 643.

For further notes *see* S. 47.

Mode of executing contracts and transfer of property.

47. (1) Every contract made by or on behalf of the committee of any municipality of the first class whereof the value or amount exceeds one hundred rupees, and every contract made by or on behalf of the committee of any municipality of the second class whereof the value or amount exceeds fifty rupees, shall be in writing, and must be signed by two members, of whom the president or a vice-president shall be one, and countersigned by the secretary:

Provided that, when the power of entering into any contract on behalf of the committee has been delegated under the last foregoing section, the signature or signatures of the member or members to whom the power has been delegated shall be sufficient.

(2) Every transfer of immoveable property belonging to any committee must be made by an instrument in writing, executed by the president or vice-president, and by at least two other members of committee, whose execution thereof shall be attested by the secretary.

(3) No contract or transfer of the description mentioned in this section executed otherwise than in conformity with the provisions of this section shall be binding on the committee.

Notes.

S. 36 of the old Act.

Analogous Law:—

S. 37, Bengal District Municipal Act, 1884.

S. 103, Bengal Municipal Act, XV of 1932.

S. 64, Behar and Orissa Municipal Act, 1922.

S. 50, Bombay Municipal Boroughs Act, 1924.

S. 40 (3) (4) (6) & (7), Bombay District Municipal Act, III of 1901

S. 39, Burma Municipal Act, III of 1898.

Ss. 114 & 115, Cantonment Act, II of 1924.

S. 44, Central Provinces Municipal Act, II of 1922.

S. 81, Madras City Municipal Act, 1919.

S. 69, Madras District Municipal Act, V of 1920.

S. 177, Rangoon City Municipal Act, 1922.

Ss. 96, 97 & 124(3) United Provinces Municipalities Act, 1916.

English Law:—

S. 174, Public Health Act, 1875.

Executive Officers Act.—S. 47 above is deemed to be omitted in municipalities to which Executive Officers Act applies, *vide* Schedule II, S. 1 of the Executive Officers Act. In such municipalities contracts are governed by the provisions of S. 6 of the Executive Officers Act, which is given below:—

6. (1) Every contract to be entered into by the committee shall be made on behalf of the committee by the Executive Officer:

Provided that the Executive Officer shall be bound by any resolution of the committee fixing terms, rates or maximum prices in the particular case or any class of cases.

(2) No contract affecting immovable property or involving a sum exceeding such sum as the committee may fix shall be made by the Executive Officer unless it has been sanctioned by the committee.

(3) Every contract made by the Executive Officer shall be reported to the committee within fifteen days of its being made.

(4) Every contract made by the Executive Officer on behalf of the committee shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged:

Provided that every contract involving a sum exceeding one hundred rupees or affecting immovable property shall be in writing and shall be sealed with the common seal of the committee.

(5) The common seal of the committee shall remain in the custody of the Executive Officer and shall not be affixed to any contract or other instrument except in the presence of the Executive Officer who shall sign the contract in token that the same was sealed in his presence.

(6) No contract executed otherwise than as provided in this section shall be binding on the committee:

Provided that, when work is given on contract at unit rates and the number of units is not precisely determinable, the contract shall not be deemed to contravene the provisions of this section merely by reason of the fact that the pecuniary limits prescribed in sub-section (2) or sub-section (4) are eventually exceeded.

Mandatory nature of S. 47.—The provisions of the section are imperative and must be followed before the municipal committees can be made liable for contracts. If the contract of the value specified in the section is not executed in strict accordance with the formalities laid down it will not be binding and if contract be executed the contractor will not be entitled to recover even on *quantum meruit*. This was strict English Law. The tendency of the Indian courts is now to relax this rule. Where committees have received benefits under contracts not executed in accordance with the provisions of this section the committees have been made liable under S. 65 or 70 of the contract or the doctrine of *quantum meruit*. The section should not be taken as a formal matter but is designed purposely for the protection of the rate-payers. As remarked by Lord Bramwell in the leading case *Young v. Mayor of Leamington*, (1883) 8 App. Cas. 517, "These provisions are designed by the legislature as a protection for rate-payers (who must act through the agency of a representative body) by requiring the observance of certain formalities which involve deliberation and reflection."

The provisions are mandatory. 1926 Oudh 388; 1932 Oudh 193; 1932 Cal. 85.

When a statute lays down certain mandatory provisions in regard to the framing of contracts between the committee and a private individual it is no answer to say that because the provisions were ignored on particular occasions and payments were made on contracts which were not in conformity with the statute that should be taken as a precedent which is binding on the committee in every case. The contracts to be binding upon the committee must be made in strict conformity with the provisions laid down in the statute. If they are not so made they are not valid as against him. Cf. 1926 Oudh 388; 99 I. C. 643. See also 54 Cal. 189; 1930 Lah. 364.

Where a statute requires that a particular kind of transfer shall be effected by a particular kind of instrument such a provision must be enforced with great stringency.

English law and Indian decisions.—A certain amount of confusion is noticeable in Indian decisions based on English authorities. In England there are corporate bodies which are not governed by the statutory provisions of S. 174 of Public Health Act, 1875, corresponding to S. 47 above. In the case of such corporate bodies it is said that their contracts are governed by common law which requires that the contracts of corporate bodies should be under seal.

This general principle has been relaxed and the presence of seal is not obligatory at least in certain cases. Where the contract has been executed, the contractor has been allowed to recover even if the seal be absent. The leading case governing the contracts of such corporate bodies is *Lawford and Billericay R. D. C.* (1903) 1 K. B. 772. In case of corporate bodies governed by the statutory provisions of S. 174, Public Health Act 1875, the formalities of the contract are obligatory and in the absence of such formalities the committees are not liable even if the other party to the contract has executed the contract unless the contract is not under the Public Health Act. The leading case in the latter class of corporate bodies is *Young v. Leamington (Mayor of)* 8 App. Cas. 517; 47 J. P. 620. In India all municipal corporations are governed by statutory provisions corresponding to S. 174, Public Health Act 1875 and considerations applicable to corporate bodies under common law should not be applied to them. In view of the importance of the subject to municipal committees the following article from the "Justice of the Peace" giving a succinct statement of law in England is quoted below:—

At common law a corporation could not contract except under its common seal, a rule which has sometimes been called a "a relic of barbarism," sometimes "a necessity inherent in the very nature of corporation." But, whichever it is, its inconvenience has led to the introduction of many exceptions. These appear to be (1) where the contract is small in amount or importance; (2) where it is of frequent occurrence; (3) where convenience almost amounting to necessity requires the omission of the seal; (4) where the matter of the contract is necessary or incidental to the purposes for which the corporation was established; and (5) where specific performance could be ordered.

In the well-known case of *Nicholson v. Bradfield Union* (1866) L. R. I. Q. B. 620; 35 L. J. Q. B. 176, the authorities are marshalled, but the difficulty of reconciling them was so great that in *Young v. Leamington Spa Corporation*, a case under the Public Health Act, 1875, both Lord Justice Lindley (as he then was) in the Court of Appeal, and Lord Blackburn, in the House of Lords, expressed the opinion that they required revised and authoritative exposition (*see* 8 Q. B. D. at p. 585 and 8 App. Cas. at p. 523). Such an exposition was given by the Court of Appeal twenty years afterwards in *Lawford v. Billericay R. D. C.* (1903) 1 K. B. 772; 72 L. J. K. B. 554; 67 J. P. 245. In that case the plaintiff was acting as engineer for the defendants in con-

nection with a sewerage scheme under a sealed agreement. A committee under the Local Government Act, 1894 requested him to perform some extra services, the plaintiff and the clerk to the defendants corresponded about his remuneration, but no agreement under seal was executed. The resolutions of the committee with respect to these services were approved by the defendants. In an action for the remuneration the defendants contended that the plaintiff could not recover for want of the seal, but the Court of Appeal held that he could. The cases were all considered, and Vaughan Williams, L. J., said: "I think the decision in *Clarke v. Cuckfield Union* and the other cases decided on the same lines, are to be preferred to the contrary decisions." Stirling, L. J., pointed out (1) that the work the plaintiff had done was necessary for the defendant corporation in carrying out the purposes for which it was created; (2) although the committee had no power to make a contract with the plaintiff, yet the confirmation of the minutes of the committee by the council amounted to a ratification of their acts and acceptance of the work done by the plaintiff; and (3) the consideration for payment was executed. "I think therefore," he said, "that the defendants are liable to pay for the work on a contract to be implied at law from their acts." This was a case of a rural district council, but with regard to urban district councils, it was laid down by Bramwell and Brett, L. JJ., in *Hunt v. Winblendon Local Board* (1878) 4 C. P. D. 48; 48 L. J. C. P. 207; 43 J. P. 284, that S. 174 of the Public Health Act, 1875, peremptorily required that all contracts of urban district councils exceeding £50 in value whether necessary and of frequent occurrence or not were to be in writing and sealed. Again in *Young v. Royal Leamington Spa* (1882) 8 Q. B. D. 519 at p. 585 Lord Justice Lindley said: "The Act draws a line between contracts for more than £50 and contracts for £50 and under; contracts for not more than £50 need not be sealed and can be enforced whether executed or not, and without reference to the question whether they could be enforced at common law by reason of their trivial nature. But contracts for more than £50 are positively required to be under seal." This judgment was adopted by Lord Blackburn in the House of Lords, 8 App. Cas. at p. 522.

In *Hodge v. Matlock Bath* (1911) 8 L. G. B. 1127; 75 J. P. 65, the plaintiff had been appointed, with another, joint architect to the urban district council in connection with the erection of a *kursaal* under a statutory obligation. The appointment was by resolution and not under seal. The plaintiff, in pursuance of the resolution, prepared plans

and did certain work for the defendants which they accepted but while the scheme was inchoate the defendants rescinded the agreement with the plaintiff and dismissed him without payment. He thereupon commenced an action against the corporation, claiming damages for wrongful dismissal, and also claiming payment on a *quantum meruit*. The jury found that the dismissal was not justified but Mr. Justice Lawrence held that the plaintiff could not recover on the ground of wrongful dismissal, because there was no contract under seal. The jury awarded £230 damages for work done by the plaintiff up to the time of his dismissal, and his Lordship gave judgment for that amount. The defendants then applied to the Court of Appeal for judgment or a new trial. The court affirmed the principle of the decision of A. T. Lawrence, J., but held that the damages must be reduced to £118 since that was the sum which plaintiff claimed in respect of work done and services rendered, and, there being no evidence to show that this sum was inadequate, the jury were wrong in exceeding the particulars which are always intended to define the limits of a plaintiff's claim in a case where there is no evidence of inadequacy.

Now here we have a case of an urban district council and the amount of unsealed contract over £50 and yet the plaintiff was paid on a *quantum meruit*. But the explanation is that the work was not done under the Public Health Act, 1875, but under the private Act for the erection of the *kursaal* which provided for the payment of the cost of the work.

Douglas v. Rhyl Urban District Council (1913) 2 Ch. 407; 82 L. J. 537; 77 J. P. 373, was another case which was held to be outside the Public Health Act, 1875. Joyce, J., said that the defendants were a corporation exercising the powers of the old Rhyl Improvement Commissioners: "Therefore their contracts must be under seal with certain exceptions. Although there may have been a difference of opinion and conflicting authorities, I think it now settled that, in the absence of an express statutory provisions requiring a contract under seal, the requirement of the corporate seal at common law is subject to this exception. Wherever the purposes for which a corporation is created render it necessary that the work shall be done or goods supplied to carry such purposes into effect, and orders are given at a corporate meeting regularly constituted and having power to make contracts authorised and necessary for the purposes for which the corporation is created, and the work is done or goods supplied and accepted, and the whole consideration

for the payment executed, there is a contract to pay implied from the acts of the corporation, and the corporation cannot keep the goods and refuse to pay on the ground of mere absence of a formality, or that the fixing of the seal was wanting. The authority for that is the very important case of *Lawford v. Billericay Urban District Council*, which, in my opinion, has settled the law."

A recent decision is *Baker and others v. Holme Cultram Urban District Council*, (1915) 85 L. J. K. B. 799; 80 J. P. 241 where a firm of parliamentary agents sued the defendants for an amount above £ 50, costs incurred in carrying a local Bill through Parliament to enable the defendants to acquire a gas undertaking. The contract of agency was not under seal; but the local Act provided that all costs and expenses should be paid by the council out of the district fund. Scrutton, J., delivered an exhaustive judgment, in which he held that the plaintiffs could not recover (1) on the contract for carrying out the purposes of the Public Health Act, 1875, as it was not under seal; nor (2) on a *quantum meruit*; but (3) they could recover on an action of debt created by the local Act. His Lordship said, "It was, in my view, *ultra vires* for the urban district council to apply for the Bill, except under the provisions of the Public Health Act, 1875, and the contract for the employment of the parliamentary agents must, therefore, be under seal so far as S. 174 of that Act is concerned." As to the *quantum meruit*, he said: "This contention was founded on the cases of *Lawford v. Billericay Rural District Council*, and *Hodge v. Matlock Bath Urban District Council*, but in the former case the defendants were a rural district council and not within S. 174 of the Act at all; and in the second case, although the defendants were an urban district council, the work the subject-matter of the action was not done under the Public Health Act, 1875, but on building a *kursaal* under a private Act, which as Cozens-Hardy, M. R., points out, removes the difficulty about the Public Health Act. In *Young v. Leamington Corporation*, the defendants had had the benefits of the contract . . . but all the courts held that this did not entitle them to disregard the absence of the seal required by the Public Health Act, 1875. Where a statute requires a contract to be under seal it is impossible, in my opinion, to imply from executed consideration a valid contract not under seal." As to the special Act, his Lordship held, on the authority of *Tilson v. Warwick Gas Light Company*, (1825) 4 L. J. (O. S.) K. B. 53 and *Carden v. General Cemetery Company*, (1839) 8 L. J. C. P. 163, that the difficulty of no contract under seal was cured by the action of debt created by the statute.

Reference may also be made to *Faraday v. Tamworth Union* (1917), 86 L. J. Ch. 436; 81 J. P. 81; 15 L. G. R. 258, where there was no binding contract under seal and the contract expressed the intention of the defendants but not that of the plaintiff. It was held by Younger, J., that even if there had been a mutual mistake it would be difficult to rectify the contract, since that would be to bind the defendants to an agreement requiring a seal which they had never sealed. But the plaintiff was entitled to have the agreement rescinded as having been executed by him under a mistake innocently induced by the defendants; and that he was entitled to remuneration on the footing of a *quantum meruit* on the principle of *Lawford v. Billericay Urban District Council* (*ubi supra*). His Lordship, however, declined to assess the amount with reference to Ryde's scale of which he expressed strong disapproval, J. P. 1919 pp. 26-27.

Note.—For full discussion of various authorities see Lumley "Public Health", Vol. I, 10th Edition, pp. 417-431.

Every contract.—There is no restriction as regards any particular contract. S. 174 of Public Health Act, 1875, only requires certain formalities if the contract is under that Act.

An auction sale is a contract but such a contract is not complete until after the fall of the hammer which signifies the acceptance of the offer or bid made by the last bidder. A regular auction sale can be held in the ordinary way, by the municipal committee and in order that the sale should conform with the provisions of S. 44,* after the contract is completed by the last bid being accepted, a signed memorandum should be prepared, and finally, when the purchase money is paid by the purchaser, a contract in writing in the shape of a sale deed or lease deed should be prepared, signed by the president or the vice-president. 1932 Nag. 128.

Contracts not conforming to the provisions of the section.—Where in a suit by the chairman of the municipality to set aside a permanent lease executed by the defendant it was found that the contract was sanctioned by the commissioner at a meeting and that it involved a value exceeding Rs. 500, but that the *kubuliyat* executed on behalf of the municipality was signed only by the chairman and although two of the commissioners witnessed it, they did not sign it as contracting parties and furthermore it was not sealed with the seal of the commissioners.

*Section of the Central Provinces Municipal Act.

Held, that the contract was not binding on the Commissioners. 34 Cal. 1030.

A contract purporting to be made by a municipality but not signed by the president or vice-president and a member as required by S. 47 is not binding on the municipality. *Cf.* 29 Mad. 360.

Where the contract is not so signed, the municipality cannot be rendered liable on the ground of executed consideration. 29 Mad. 360.

An agreement falling within the scope of this section is invalid if the provisions of the section have not been complied with and is not binding on either of the parties to it. The fact that such an agreement was partially acted upon, cannot render it an operative contract. The suit was based upon the agreement alone and was not treated as a suit for money had or received. The suit was dismissed on the invalidity of contract. 30 Mad. 290.

Section applies to an agreement relating to the right to collect tolls. 30 Mad. 290.

A municipality invited tenders for the supply of ballast and accepted the appellant's tender by resolution at a meeting properly convened. It received some ballast from the appellant and paid for it, but refused to accept the rest. The appellant sued for damages:

Held, that a contract or agreement is not binding on a municipality unless it is reduced to writing. An agreement entered into with a municipality not having been committed into writing and signed as required by this section cannot form the basis of a suit, notwithstanding any goods supplied in pursuance of it. 27 All. 592, *contra* 28 Bom. 66.

A contract for the supply of water to a tank was made by the Committee of Amritsar with the plaintiff but the contract was not signed by the president nor by vice-president nor by any member of the committee as required by S. 47. It was *held* that the contract was not binding on the committee. P. R. 39 of 1919; 51 I. C. 391.

Port Commissioners entered into a written agreement to hire a ship for towing purposes. The agreement was in writing but was not signed in accordance with the mode laid down for executing such contracts. The port authorities sued the hirer for the amount due under the agreement. The defendant pleaded that the agreement was illegal and void under the Port Act and was not binding or of any legal effect upon any of the

parties thereto. It was *held* that the provisions as regards the formalities were obligatory and the non-compliance with the provisions rendered the agreement unenforceable. It was also *held* that the exceptions held to be applicable to contracts of corporations under common law do not apply to corporations governed by statutory law. 1927 Cal. 465; 54 Cal. 189.

A contract having incomplete signatures under S. 47 is unenforceable, although it was left incompletely signed due to board's failure to observe formalities, as the provisions of the Act are for the protection of the public and they cannot be made nugatory on such grounds. Cf. 1926 Oudh 388.

Where the President of the District Council, who had authority to give contracts ordered certain work to be done by the plaintiff but contract was not reduced to the form of a document, though being for over Rs. 100 it ought to have been in writing, plaintiff is entitled under S. 70, Contract Act, to be compensated for the work done on the principle of the *quantum meruit*, though he could not sue on the contract and the absence of a contract in writing is answer to the action brought by the plaintiff in respect of the work done by him for the council. 1932 Rang. 176.

If the provisions of Ss. 44 and 45, District Municipalities Act are not complied with the contract is void.

Where a contract is void for non-compliance of the provisions of Ss. 44 and 45, Madras District Municipalities Act, S. 65, Contract Act, has no application and neither the principle of *quantum meruit* nor the principle of *quantum valebat* applies.

Where in a case of supply of goods the contract is found to be void and S. 65, Contract Act, is found to be applicable, it is the doctrine of *quantum valebat* and not that of *quantum meruit* that must be applied; and where the actual goods cannot be returned, restitution must be fixed at the price at which they were sold by the vendors.

A president of a committee who is authorized to purchase goods has equal authority to acknowledge. Such authority need not be express. 1933 Mad. 332.

Signed.—Speaking generally a signature is the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that or as binding on the person whose name or mark is so written or affixed. The inser-

tion of the name, in any part of the writing, in a manner to authenticate the instrument is sufficient. Although the signature be in the beginning or middle of the instrument, it is binding as if at the foot of it. The question always is, whether the party not having signed it regularly at the foot yet meant to be bound by it as it stood, or whether it was left, so unsigned because he refused to complete it; but when it is ascertained that he meant to be bound by it as a complete contract, the signature is, for purposes of execution, effective. The courts have gone so far as to hold that the name at the head of a telegram was sufficient. Some of the cases even hold that it matters not for what purpose the signature was put, if in fact it authenticates the document. But the primary rule is that where the name occurs in the document, not as authenticating the whole, but only for a particular purpose or only with reference to a part, it is not an effective signature. 50 C. 180; 1923 Cal. 35; 70 I. C. 794.

Doctrine of acquiescence.—The doctrine of acquiescence cannot be invoked to defeat a clear statutory provision. 1926 Oudh 388 & 1928 P. C. 273.

Transfer of immovable property.—It will be seen that the formalities with regard to transfer of municipal property are much stricter. In the absence of such formalities no title will pass.

Transfer by committees.—Rule 98 made under S. 138 (d) of Bengal Local Self-Government Act (III of 1885 B. C.) corresponds with S. 47 of the Act and Rule 93 corresponds to rules under S. 240 (o).

A district board sold land by public auction to the highest bidder and only issued an unregistered certificate of sale to the purchaser. As the property was not specifically described in the certificate the chairman of the board executed in favour of the purchaser a registered deed of release which did not purport to be a deed of conveyance and was stamped as a release: *Held* that by the document no valid title passed to the purchaser as the unregistered sale certificate could not operate as a conveyance and that the deed of release was inoperative to transfer title because title to land could not pass by a mere admission when the statute required a deed. Even if the release was construed as a conveyance, as the document of the sale certificate though sealed and signed by the chairman was not signep by two members of the board, the sale would be invalid as contravening the provisions of rule 98 corresponding to S. 47 (2) of the Punjab Act.

These documents did not constitute even a valid contract for sale as it was not sanctioned at a meeting of the board or executed in accordance with rule 103 of the District Board Act.

It was also *held* that the purchaser who came into court as plaintiff for recovery of possession of land and declaration of title thereto must succeed on proof of valid title, and could not be allowed a postponement to complete his title by securing a duly executed sale-deed.

The provisions of S. 47 and rules under S. 240 (o) are mandatory and not merely directory. No property vested in a municipal corporation could be sold except with the previous sanction of the authority mentioned in rules under S. 240 (o) and except by a writing duly signed as required by S. 47.

A rule framed for the purpose of regulating the power to do a certain thing may deal with the extent as also the mode of exercise of that power, though it cannot prevent or prohibit the exercise of the power. 35 I. C. 305; 43 Cal. 790.

It will be seen that the transfer must be in writing whatever be the value of the property transferred. When the property is worth more than hundred rupees, the instrument must further be registered according to the Registration Act.

Where a transfer has been executed in full compliance with the formalities required under S. 47, it will not be effective unless it also fulfils the requirements of other statutes. A transfer of immovable property if in writing must be registered, and for that purpose all the executants (*i.e.*, president or vice-president and two members) must be present before the registrar and admit execution to render the deed effective against the committee. For the purposes of signature the insertion of the name of the executant in any part of the writing is sufficient. 57 Cal. 180, 70 I. C. 794.

Lease is a contract or transfer as contemplated by S. 47. Where lease is not executed in accordance with the provisions of the Act, the suit could only be regarded as based on an implied contract. 1932 Cal. 85.

Sufficient compliance.—The defendant entered into a contract with the plaintiff, a municipal board, for storing and consolidating *kankar*. The defendant failing to do so, the plaintiff sued him for damages. The agreement was signed

by the defendant and on the back were endorsed the signatures of both the secretary and vice-chairman, and this endorsement referred to the contents of the contract and its confirmation: *Held* this was a sufficient compliance with the provisions of the section. 29 All. 346.

Not binding on the committee.—This does not prescribe in the affirmative that the contract so executed shall be binding on the commissioners. The reason is plain; for the contract may be such as is subject to the operation of other statutory provisions, for instance, those of the Transfer of Property Act and of the Indian Registration Act: 50 Cal. 180; 1923 Cal. 35. The contention that where the corporation has adopted a contract and acted upon it upon general principles of reason the right to set up the defence should fail was not accepted. 1927 C. 465; 54 C. 189.

The courts seem to have gone beyond the wording of similar provisions in other Acts in absolving the other contracting parties also from the obligations under the contract. The courts seem to have overlooked that the provisions are meant for the protection of rate-payers, and that where the committees are claiming under a contract not in writing and not in accordance with the formalities, the interests of the ratepayers will be served and not endangered by enforcing the contract. In cases where the contract was still to be executed by both sides, the other party may be absolved on account of absence of mutuality.

In the following cases it will be noticed that the contract was in executory state or the committee was claiming for part not carried out.

In the absence of the contract in writing the municipality cannot maintain a suit for damages if the contract is broken by the defendant. 16 I. C. 890.

It is open to a defendant to show that the contract is not binding on him inasmuch as it was not binding on the plaintiff as the formalities prescribed by the Act had not been complied with. 27 Bom. 618.

If not binding on the committee, it follows that it is not binding on the other parties to the contract. When a corporation is not bound by a contract by reason of their common seal not being affixed, the other party to the contract is equally free from the obligation. *Kidderminster v. Harwick*, L. R. 9 Ex. 13.

Cf. Soothill Upper U. D. C. v. Wakefield D. C., (1905) 1 Ch. 53. This case lends support to the view that the section is meant to protect the interests of the committees and it applies to cases where committees have to make payments and not to cases where they have to receive payments.

Committees held liable or entitled though no contract in writing.—In the following cases the committees were allowed to recover or were made liable under S. 65 or 70 of the Contract Act or on the principle of *quantum meruit* in cases where the contracts were not in writing:—

An agreement was entered into between the commissioners of a town and the defendant farming the tolls of the said town to the defendant for one year. The agreement was duly signed by the defendant but was not executed formally as required by Madras Act, III of 1871. In a suit brought after the expiry of the year for a portion of the sum due to the commissioners, the defendant resisted the claim on the ground that the agreement was not executed as required by law: *Held*, that inasmuch as the plaintiff had fully performed all things to be performed on his part and both parties had acted under the agreement, though it was not formally executed by the commissioners and as the defendant had the full benefit of the contract, it would be contrary to equity and good conscience to allow him to set up as ground of defence that there was no contract in point of law. 2 Mad. 104.

The right to collect fees or tolls for slaughtering cattle in a slaughter-house was leased by the plaintiff municipality to the defendant and the latter enjoyed the right for the period of the lease but no written contract was executed as required by S. 45 of the Madras District Municipalities Act of 1884. In a suit by the municipality to recover the lease amount: *Held*, that although no claim could be made on the basis of written contract, the plaintiff municipality was entitled to a decree inasmuch as the defendant had enjoyed the right for the period contracted for and was liable as on an implied contract. 72 I. C. 703.

Similar arguments cannot be urged in favour of contractors who have carried out the contract though not in writing. In the last case noted above the judges seem to have relied on *Lawford v. Billericay R. D. C.*, (1903) 1 K. B. 72 and to have overlooked that the decision was not under S. 174, Public Health Act.

Ss. 65 and 70 of the Contract Act.—Out of two sections namely, Ss. 65 and 70 the latter section covers

a wider ground and should not be invoked in the case of a benefit received under a contract. Where it is not ignorance of the law which led the parties to believe a contract to be enforceable but a mistake as to what had been done S. 65 would apply. S. 65 may be based on the English doctrine of acquiescence and this latter doctrine may be inapplicable as a rule of justice, equity and good conscience in the face of Ss. 46 and 47 of the Municipal Act but as these sections cannot be held to have repealed S. 65 of the Contract Act that section being a rule of statutory law must be given effect to. So even if when the contract is not enforceable owing to absence of formalities the committee could be held liable under S. 65 of the Contract Act. *Cf.* 1926 Oudh 388; 99 I. C. 643. *See also* 1927 Oudh 177; 1926 Oudh 119, 90 I. C. 140; 1925 Oudh 737.

Where the president of a committee *bona fide* acts on behalf of the committee and where the committee gets the benefit of such an act it is not open to the committee to deny liability which arises from the benefit which it gets. The president has power to instruct a vakil to defend a suit without obtaining the previous sanction of the committee and the committee is bound to pay the vakil even though there is no express sanction to engage a pleader. 1928 Mad. 981; 66 M. L. J. 110; 111 I. C. 740.

Liability under S. 70 of the Contract Act when formalities not observed. – The provisions of law laid down in S. 30 (2), Government of India Act, are mandatory and not merely directory and must be strictly complied with in order to constitute a valid contract with the Secretary of State for India. The act of a person who is not authorized by the Governor-General in Council, in entering into a contract on behalf of the Secretary of State for India is *ultra vires* and there is no valid contract with the Secretary of State.

Return of money advanced can be claimed either on the basis of *quantum meruit* or on the principle of the restoration of benefit under a void contract. 1930 Lah. 364, 11 Lah. 375.

S. 70 of the Contract Act must be interpreted according to its clear and explicit terms and not in reference to the provisions of the English Law relating to the matter. The section is much wider than the English law and goes beyond it.

Where the Secretary of State receives from the plaintiff grain for purposes of feeding horses which he had undertaken to maintain, he is equitably bound to pay compensation to

the plaintiff for the quantity so delivered and consumed by the horses though contract proves to be invalid. The plaintiffs are therefore entitled to money equivalent of the grain as compensation under S. 70 assessed at the market rate prevailing on the dates on which the supplies were made.

In interpreting the statutory provisions of an Act of the Indian legislature the court should examine the language of Indian statute uninfluenced by any consideration derived from the English law upon which it may be founded. 11 Lah. 375; 1930 Lah 364 ; 120 I. C. 615.

Contra — See 1932 Oudh 193.

“Where a corporation received money or property under an agreement which turns out to be *ultra vires* or illegal, it is not entitled to retain the money. The obligation to do justice rests upon all persons natural or artificial; if one obtains the money or property of others without authority, the law independently of express contract will compel restitution or compensation.” 1933 Mad. 145.

Law of contract not applicable in presence of special law.—The general law of the country should be given effect to if there is no special law to the contrary. But if there is such special law then the principle *generalia specialibus non derogant* applies.

Where a contract in writing is void from its inception in the absence of special circumstances it must be held that it was discovered to be so on the date on which it was reduced to writing. But even if so, it would fall within the terms of S. 65 as a contract which has become void. 1932 Oudh 193.

Principle of quantum meruit not applied.—Certainly in cases of void contracts the principle of restitution embodied in S. 65, Contract Act, would be the principle of giving relief upon *quantum meruit*. But where a special law creates a corporate body and that body cannot enter into a contract except under seal, no relief can be given to a person relying on a contract entered into between him and the board, but not under seal even on *quantum meruit*, for a man cannot be allowed to do by indirect means what he is forbidden to do directly: 1932 Oudh 193. See the criticism of the ruling in A. I. R. 1932 Journal, p. 115; *contra* 1927 Cal. 465; 54 Cal. 189.

Contract not conforming to imperative provisions—Committee performing its part entitled to recover.—Although a contract has not been reduced to writing and so does not

conform to the imperative provisions of S. 47, Punjab Municipal Act, yet if the committee has performed its part of the contract, and the other party has derived benefit therefrom he must pay for what he has actually received and enjoyed as if there was an implied contract between the two for payment, and a suit by the municipal committee for the same is maintainable. *Lawford v. Billericay Rural District Council* (1903) 1 K. B. 772, *Folld.* 1929 Lah. 742.

S. 47 of Municipal Act and S. 70 Contract Act - Claim of interest on unpaid bills.—The plaintiffs had supplied coal to the municipal committee in large quantities. But their bills were kept unpaid for a long time and therefore the plaintiffs gave several notices to the municipality that interest would be charged on the unpaid bills. The bills had been paid without interest and so the plaintiffs instituted a suit for interest alone. It was objected that the suit could not be maintained.

Held, that though the suit could not be brought under S. 47, Punjab Municipal Act, the contract for the supply of coal not being made according to the requirements of the said section, yet the plaintiffs were entitled to be compensated for the price of coal as on an implied contract under S. 70, Contract Act. That implied contract would also include the right to claim payment of the price of coal supplied according to the rate of tender accepted by the municipality. Therefore such a claim was for a sum certain and hence interest was recoverable on the unpaid bills under the Interest Act.

Held, also, that the Interest Act did not prohibit a suit for interest alone, if the principal had been paid by the debtor before the institution of the suit. As the plaintiff paid interest to their bankers at 9 per cent. per annum on sums borrowed for carrying on the coal business it was also reasonable to include that amount in the compensation to be awarded to the plaintiffs within a reasonable time. 1931 Lah. 457.

Where a corporation or committee makes a contract formalities for which are prescribed by statute and there is a failure to observe these formalities, then the contract is invalid and cannot form the subject of an action even though there is executed consideration.

Where a contract is invalid and unenforceable but a party has benefited under the contract, there is no reason why a decree should not be passed against him on a *quantum meruit* basis. 1933 Pesh. 16.

Pleadings.—Absence of the formalities must be specifically pleaded. *See Macdonald & Deaken v. Bacap Corporation* (1911) 130 L. T. J. O. (344). In a Punjab case, however, this plea was allowed to be raised at a late stage. *See* 39 P. R. 1919.

Dispensation and remission.—*Held*, under an analogous provision of the Bombay District Municipal Act, that dispensation or remission under S. 63 of the Indian Contract Act requires an agreement or contract. Such a contract if not made according to the provision of the Municipal Act is not binding on the municipality. 28 Bom. 66.

Though a contract by a corporation must ordinarily be made under seal, still where there is what is known as executed consideration, an action will lie though the formality has not been observed. *Ibid.* (Here again the distinction between two sets of corporations has been overlooked.)

The Allahabad High Court has dissented from this view as regards executed contract in 27 All. 592.

Limit of value.—The provisions of S. 47 will not apply to contracts of value Rs. 100 or 50 or below as the case may be.

In order to attract the provisions of the section the value of the contract must exceed the limit at the time of entering it. A medical man agreed verbally with the committee on behalf of the sanitary authority, to attend patients suffering from scarlet fever at the rate of 5s. 3d. per cent. per day and attended until the amount due was nearly £100: *Held*, that although more than £50 became due, it was not a contract whereof the value or amount exceeds £50, "within the meaning of the Public Health Act, 1875, S. 174," because at the time of entering into it, the parties had not ascertained that it would exceed £50 and that the urban sanitary authority was liable to the medical man. *Hunt v. Wimbledon Local Board*, 4 C. P. D. 43; 43 J. P. 284, *Eaten v. Basker* (1881) 7 Q. B. D. 529.

Value certain ; but contract split up into parts.—It would appear that under certain circumstances the paragraph may not apply even when the parties contemplate the making of a contract the value whereof may exceed £50. Coal merchants tendered for the supply to an urban council of coals which it was thought would exceed in value £100. The tender contained stipulations that, if it was accepted, a formal contract and a bond with two sureties should be executed. The tender was accepted, subject to the formal contract and bond being duly executed. The contract and bond were

forwarded to the coal merchants, but were never executed. The coal merchants afterwards from time to time supplied quantities of coal which were accepted, the value of the coal supplied not amounting in any one instance to £50, but amounting in the aggregate to over £50. It was *held* that the council were bound to pay, under an implied contract, for each lot of coal so supplied and accepted: *Spencer & Co. v. Southall-Norwood U. D. C.*, (1905) 3 L. G. R. 641 ; 69 J. P. 308. The decision went on the ground that there was no acceptance of the tender pending the execution of a formal contract, and therefore nothing constituting a contract to which the provisions of the statute could apply; consequently there was only a contract, on the occasion of each order and delivery.

Executed and executory contracts.—The 174th section of the Public Health Act, 1875, which imperatively requires that every contract made by an urban authority, whereof the value or amount exceeds £50, must be in writing and sealed with the common seal of such authority, applies not only to an executory contract but also to an executed contract, although made by an agent duly appointed under seal. *Young v. Leamington Corporation*, 8 Q. B. D. 579. See also 27 All. 592 noted above.

See cases and notes under “Not binding on the committees.”

So far as contracts of municipal committees governed by provisions similar to S. 47 are concerned, it may be taken as established that the committees are not liable on the basis of the contract which is invalid even if the other side has executed the contract and the committees have accepted the work of the contractor. In case of contracts still to be executed the committees are similarly not liable and cannot be compelled to stick to the contract.

Any contract made by a municipal committee which does not fulfil the requirements of S. 47, is absolutely null and void, and mutually unenforceable. This disability is not shaken off even if the contract had been wholly executed. *Cf.* 1930 Mad. 600 ; 53 Mad. 352.

Subsequent compliance with formalities.—The defendants, an urban authority, by a contract not under seal, employed the plaintiffs as engineers to do certain work. The plaintiffs performed part of the work exceeding in value £50, and then required the defendants to affix their seal to the contract. This the defendants did believing that it was for the benefit of the rate-payers that the contract should be completed.

Cave, J., *held* that, as part of the work was performed when the seal was affixed, and there was consideration for affixing it on the plaintiff's promise to complete the work, it was competent for the defendants to constitute the contract a good contract under seal within S. 174 in respect of the work already done; and, therefore, that the plaintiffs were entitled to maintain their action for the value of that work. *Melliss v. Shirley L. B.*, (1885) 14 Q. B. D. 911.

See also Brooks, Jenkins and Co., v. Torquay Corporation, (1902) 1 K. B. 601; here it was held that, even without a new consideration, there may be a binding confirmation under seal.

Effect of variation from contract.—Where an urban authority enters into a sealed contract with a contractor for the construction by him of works, and the contract contains the usual power for the engineer, who has the control and supervision of the works, to vary, alter, enlarge, or diminish any of them, all variations and alterations coming within the terms of the power conferred on the engineer can be validly made without being under the common seal of the authority. *Williams v. Barmouth, U. D. C.*, (1897). 77 L. T. 383.

An urban council issued under their seal conditions in accordance with which architects were to tender designs for the erection of municipal buildings. An assessor was to select the architect whose plans he considered best, but the council were not expressly bound to appoint the assessor's choice. The plaintiff was in fact selected by the assessor, and appointed by the council. He prepared plans but the Local Government Board refused to leave to borrow for the amount of the scheme. Accordingly the plaintiff prepared fresh plans at less cost under instruction from the council. The scheme was never carried out, and the plaintiff sued for his fees under the original agreement. The defendants objected that there was no contract under seal. It was *held* (applying the *Barmouth* case, *supra*), that these fees had been earned under a modification of the original scheme and not under a new scheme; that S. 174 was satisfied by the original conditions of tender; and that the plaintiff was entitled to recover. *Hunt v. Acton U. D. C.*, (1908) 72 J. P. 345.

Compromise of action or claim.—An agreement between an urban authority and a contractor employed to construct works for them, as a compromise and in full settlement of all claims by him against the urban authority is not a contract within S. 173 of the Public Health Act, 1875, necessary

for carrying that Act into execution, so as to require to be sealed with the common seal of the urban authority under S. 174 ; and therefore such agreement, though not under seal, is capable of being enforced against the urban authority: *Williams v. Barmouth U. D. C.*, *supra*; see also *Leicester Guardians v. Trollope*, (1911) 75 J. P. 197.

An agreement by a local board compromising an action is not within this section, and is not void by reason of its not being under seal, *Att.-Gen. v. Gaskil*, (1882) 22 Ch. D. 537. For further notes see "Lumley's Public Health Acts," p. 424.

Forfeiture of deposits.—A *muchalka* executed by a contractor to a municipality contained a provision that in any default on his part he should forfeit the sum deposited by him under the terms of the contract. The deposited amount was attached by the plaintiff in execution of a decree against the contractor. The municipal council passed a resolution that the deposit had become forfeited under the *muchalka*. Plaintiff as purchaser of the contractor's right to the above money sued for the recovery of the same from the municipality. He was held entitled to a decree.

The resolution of the council declaring the deposit amount forfeited was *ultra vires* since the provision in the *muchalka* regarding the forfeiture of the deposit was penal and unenforceable and did not fall within the exception to S. 74 of the Indian Contract Act. The *muchalka* could not be regarded as having been given under the provisions of the Municipal Act or any other law for the performance of any public duty or act. 16 Mad. 474 (*Sec Contra* 29 Mad. 118).

The above ruling was not followed in a later case where it was held that the general doctrine as to penalties dealt with in S. 74 of the Indian Contract Act and in the various decisions of the Court, do not apply to cases of forfeiture of deposits for the breach of stipulation under an instrument. The rule in the latter class of cases is that, where the instrument refers to a sum deposited as security for performance, the forfeiture will not be interfered with if reasonable in amount. The attention of the learned judges who decided the case in 16 Mad. 474 was not drawn to such inapplicability of the general provisions and doctrine as to penalties therein relied on, to cases of forfeiture of deposits. 29 Mad. 118; 16 M. L. J. 37.

Doctrine of part performance.—It has also been held that the exception based on the doctrine of part performance

cannot be applied where the contract is by statute required to be executed in a certain form. To hold otherwise would in fact be to repeal the Act and to deprive the rate-payers of that protection which legislature intended to secure for them. (1912) 2 Ch. 452 relied upon. 1927 Cal. 465; 54 Cal. 189; 1928 P. C. 273.

The plaintiffs were however held entitled to recover, *quantum meruit* for the services rendered by them to the defendants. The invalidity of the agreement does not prevent the corporation from recovering such amount as may be just and reasonable for services rendered by them. 1927 Cal. 465; 54 Cal. 189; 1930 Mad. 600.

The doctrine of part performance.—This doctrine is an extension of the rule of estoppel which may form a valid plea to resist an action in which the title of the defendant was not founded on a completed contract. Where there is a mere executory contract the remedy of the party aggrieved is by a suit for specific performance of the contract instituted within the period of limitation. In the case of a completed contract where all the formalities required by law have been duly fulfilled the case of the party rests upon a perfected title. In between these two stages comes part performance. The doctrine cannot override express statutory provisions which are mandatory. 1928 All. 699; *see also* 1928 Oudh 479; 1927 Nag. 177; 1926 Oudh 388; 1926 Nag. 79, and 466; 1931 Oudh 288.

Doctrine of part performance has no application to the more stringent provisions of S. 47 by which transfer of land not duly executed in accordance with the section is rendered of no force. *Cf.* 1928 P. C. 273.

Contract, breach of.—The municipality sold by auction a license for the pawnshop and N purchased it. The terms of the contract of sale were reduced to a document which recited that N was licensed to carry on business as a pawnbroker for three years subject to certain conditions but contained no guarantee as to the validity of the license. The grant of the license was, on appeal by a disappointed bidder, set aside by the commissioner under the powers given to him by the Municipal Act on the ground that 14 days' notice as required by the bye-laws was not given. The committee resold the license by auction and it was again purchased by N for a much higher sum. N brought a suit against committee in damages for breach of contract basing his claim on the difference between the two bids.

Held, that the municipality were not in a position to guarantee what the action of the commissioner would be, nor

could it be presumed that they ever intended to give any guarantee in the matter and that there was no breach of contract on their part and so they were not liable to damages. 1930 Rangoon 16.

Lease registered but not in accordance with S. 47—Lease not for purposes of Act—Article 116 of the Limitation Act—Implied contract.—The granting of a lease of land not required for the purposes of the Act under S. 34 is clearly an act done for the purposes of the Act itself, and the funds realized by such lease are clearly again funds to be utilized for carrying out the purposes of the Act as authorized by S. 69, Cl. 17. Leases come within the purview of S. 37, which must be read along with S. 34. 34 Cal. 1030, *Rel. on.*

The provisions of S. 37 are mandatory and non-compliance therewith render an agreement unenforceable.

Where the plaintiff has taken a lease for agricultural purposes from the municipal committee and has executed a registered *kabuliyat* and has filed a suit for damages owing to the breach of the conditions of the said *kabuliyat* against the municipal committee, neither Art. 36 nor Art. 39 would apply, but either Art. 115 or Art. 116 will apply according as the contract, the breach of which is the foundation of the claim, is unregistered or registered. 1932 Cal. 85.

S. 47—Standing offers.—Many of the contracts entered into by municipal corporations are in the nature of mere standing offers. Care should therefore be taken to see that valid contracts are drawn up and entered into so that they might be binding on both parties to the contract. In *R. V. Demers*, 2 (1900) A. C. 103 a printer covenanted to execute for the Government of the Province of Quebec during a term of eight years, the printing and binding certain public documents on certain terms expressed in a Schedule. In the course of the same year, the Lieutenant-Governor cancelled the agreement. The printer sued the Crown by petition of right and it was ultimately held, reversing the judgment below, that he has no ground of action. Their Lordships of the Privy Council said:

“The contract does not purport to contain any covenant or obligation of any sort on the part of the Crown. The respondent undertakes to print certain public documents at certain specified rates. For all works given to him on the footing of the contract the Government was undoubtedly bound to pay according to the agreed tariff. But the contract imposes no obligation on the Crown to pay the respondent for the work not given to him for execution. There

is nothing in the contract binding the Government to give to the respondent all or any of the printing works referred to in the contract, nor is there anything in it to prevent the Government from giving the whole of the work, or such part as they think fit to any other printer."

A writing whereby A agrees to supply coal to B at certain prices and up to a stated quantity or in any quantity which may be required, for a period of twelve months is not a contract unless B binds himself to take some certain quantity, but a mere continuing offer which may be accepted by B from time to time by ordering goods upon the terms of the offer ; and each order given by B is an acceptance of the offer ; and A can withdraw the offer or to use the phraseology of the Indian Contract Act, revoke the proposal, at any time before its acceptance by an order from B. It is therefore necessary that care should be taken in drawing up these contracts. 24 Bom. 97; P. R. 72 of 1904.

Right of stranger to challenge validity of contract.—Where a municipal committee accepts liability for a contract not in accordance with the provision of S. 47, a third party cannot plead that the contract is illegal as not being in writing or not having been sanctioned by the committee. *Cf.* 1923 All. 371; 75 L. C. 607.

48. (1) If any member, officer or servant of a committee or of a joint committee, without the previous permission in writing of the Commissioner voluntarily renders himself interested in any contract made with that committee, or if within one month of his becoming interested in any such contract he neither resigns nor obtains the permission in writing of the Commissioner for his remaining a member, officer or servant of the committee in spite of his interest in such contract, he shall be deemed to have committed an offence under S. 168 of the Indian Penal Code:

Penalty of
member
officer or
servant be-
ing interest-
ed in con-
tract made
with com-
mittee.

Provided that for the purposes of this sub-section a person who has been elected but whose election has not been notified shall be deemed to be a member.

(2) No member, officer or servant of a committee or of a joint committee shall, by reason only of his being a shareholder in, or a member of, any incorporated or registered company, be held to be interested in any contract entered into between the said company and the committee or joint committee : but no such person as aforesaid shall take part in any proceedings of the committee or joint committee relating to any such contracts.

Notes.

S. 37 of the old Act.

Analogous Law:—

- S. 57, Bengal District Municipal Act, 1884.
 S. 72, Bengal District Municipal Act, 1932.
 Ss. 55 & 56, Behar and Orissa Municipal Act, 1922.
 Ss. 54 & 55, Bombay Municipal Boroughs Act, 1925.
 S. 44, Bombay District Municipal Act, III of 1901.
 Ss. 84 & 474, Bombay City Municipal Act, III of 1888.
 Ss. 26, 40 & 40-A, Burma Municipal Act, III of 1898.

- Ss. 53 & 49, Calcutta City Municipal Act, III of 1923.
 S. 36, Cantonment Act, II of 1924.
 S. 45, Central Provinces Municipal Act, II of 1922.
 S. 314, Madras District Municipal Act, V of 1920.
 Ss. 33 & 209, Rangoon City Municipal Act, 1922.
 Ss. 82 & 83, United Provinces Municipal Act, 1916.

English Law:—

- S. 12, Municipal Corporation Act, 1882.

Recent changes.—Sub-section (1) of this section has been substituted by S. 22 of the Punjab Amendment Act, III of 1933. A member or servant may become interested in two ways: (1) he may voluntarily render himself interested in a contract (2) he may become interested by something done by others. In the latter case he must either resign or obtain permission of the commissioner within one month, otherwise he will be deemed to have committed an offence. Previously there was no such limitation. The responsibility of getting permission or resigning has been thrown on members or servants who become interested in the contract. The words “directly and indirectly” have been deleted.

Object and scope.—The object of the section clearly is to prevent all dealings on the part of the committee with any of its own members or servants in their private capacity, in other words to prevent a member of the committee standing in the situation of a trustee for the public from taking any share or profit out of the trust fund or in any contract or employment in the making or regulating of which he as one of the committee ought to exercise a superintendence.

The evil contemplated being evident and the words used being general, they will be construed to extend to all cases which come within the mischief intended to be guarded against and which can fairly be brought within the words of the section. Upon this principle a person who had entered into an existing contract for profit with the Council was held to be disqualified even though by reason of its not being under seal, he could not have sued the corporation on the contract. *Regina v. Francis*, 18 Q. B. 526.

Under English law such a contract will be illegal and the member or servant cannot sue upon such a contract. *Melliss v. Shirley Local Board*, 16 Q. B. D. 446.

In 58 Cal. 130 under a corresponding provision of Bengal District Municipal Act the judges remarked as below:—

The object of S. 57 is obviously to prevent the conflict between interest and duty that might otherwise inevitably arise. And although that is the purpose and object of the provision, the courts should bear in mind that they are penal provisions and therefore ought not to be extended beyond those legitimate limits; at the same time if there is any doubt the courts should be careful to see that intention of the legislature in enacting the section is duly observed and the courts ought to be disposed to view with greatest disfavour any infraction whatever or any breach of the provisions of the disqualifying section.

Contracts with municipal officers; fiduciary relations.—It is a well-established and salutary doctrine that he who is intrusted with the business of others cannot be allowed to make such business an object of pecuniary profit to himself. The rule does not depend on reasoning technical in its character and is not local in its application. It is based upon principles of reason, of morality, and of public policy. It has its foundation in the very constitution of our nature, for it has authoritatively been declared that a man cannot serve two masters, and is recognized and enforced wherever a well-regulated system of jurisprudence prevails. The law will in no case permit persons who have undertaken a fiduciary character or a charge to change or invert that character by leaving it and acting for themselves in a business in which their character binds them to act for others. The application of the rule may in some instances appear to bear hard upon individuals who have committed no moral wrong; but it is essential to the keeping of all parties filling a fiduciary character to their duty, to preserve the rule in its integrity, and to apply it to every case which justly falls within its principle. The principle generally applicable to all officers and directors of a corporation is that they cannot enter into contracts with such corporation to do any work for it, nor can they subsequently derive any benefit personally from such contracts. To deny the application of the rule to municipal bodies would, in the opinion of the Canadian Chancery Court, whose views we adopt and approve, be to deprive the rule of much of its value; for the well working of the municipal system, through which a large portion of the affairs of the country are administered, must depend very much upon the freedom from abuse with which they are conducted. Nothing can more tend to correct the tendency to abuse than to make abuses unprofitable to

those who engage in them, and to have them stamped as abuses in courts of justice. The tendency to abuse may indeed be in part corrected by public opinion. But public opinion itself is acted upon by the mode in which courts deal with such abuses as are brought within their cognizance. It is contrary to good morals and public policy to permit a municipal officer to enter into contractual relations with the municipality of which he is an officer.

The principles of the common law and of equity are generally supplemented and made more emphatic by statutory enactments prohibiting any municipal officer from being interested directly or indirectly in any municipal contract or in the rendition of services for the municipality outside of those required from him by virtue of his office. The statutes usually make a violation of their provisions a criminal offence entailing a forfeiture of office as well as punishment by fine or imprisonment, and they frequently declare that all contracts entered into in violation of their provisions shall be void. Such statutes are declaratory, of and in aid, of the principles of the common law, though, as we shall see, some difference in the resulting consequences of the illegality appears in the decisions. Dillon, pp. 1140—1143.

Such contracts are void.—Though the section does not specifically declare such a contract as void such contracts have been held to be illegal and against public policy. If, however, a person entering into a contract is not a member but subsequently becomes a member the contract will not become illegal.

The fact that the member or officer did not take part in the proceedings which resulted in the making of the contract with him, will not make the contract valid. As observed by the judge in an American case: "It is said in the case before us that the supervisor who was employed did not vote on the question of his own employment or upon the audit of his bill; that does not cure the evil; the influence upon his fellow-members is the same; his constituents are entitled to his judgment in making contracts, to his scrutiny in passing upon accounts, and to his unbiased and disinterested efforts in both; and he cannot make the violation or neglect of the duties he owes to his constituents the means of validating an otherwise illegal act; he cannot put on and off the garb of a public official, and discharge or refuse to discharge the duties of his trust at will, and as best subserve his private interests. He is a part of the board of supervisors; it is his act, and he cannot, as a supervisor, make a contract with himself as a private citizen." Dillon, p. 1145 note.

The offence is not a municipal offence.—A member or servant violating the provisions of S. 48 commits an offence not punishable under the municipal law but punishable under S. 168, I. P. C. and S. 228 of the Municipal Act has no application. *Cf.* 6 N. L. R. 114, 8 I. C. 274; 1933 All. 543.

Extent of interest.—The disqualification will not depend on the value of the contract, nor on the amount of interest of the officer or member in the contract.

In *Nell v. Longbottom*, (1894) 1 Q. B. 767 a person who had been appointed by the watch committee a chemist to the council, and from whose shop four pence worth of oil was bought in his absence, was held to be disqualified, *Cave, J.*, saying in reply to the argument that the contract was a very small one, "that, however, is a matter into which we cannot enter, as the legislature has not entrusted us with any dispensing powers, and probably considered that the maxim of *obsta principiis* should apply to cases of this sort." In *Rex v. Rowlands*, (1906) 2 K. B. 292, Lord Alverstone, *C. J.*, said: "I was at first impressed by the fact that the commission paid was a small amount; but I am now satisfied that we ought not to take into account the smallness of the sum, because the absolute freedom from the position which the entering into any such contract involves should be maintained."

The interest must not be too speculative and remote. It must not be mere sentimental interest such as that which a father may have in the prosperity of his son. Where there is a pecuniary advantage or a reasonable expectation of a pecuniary advantage, it must be regarded as an "interest" within the meaning of the section. The interest in a contract is pecuniary, it is immaterial that the amount involved is trifling even if the interest is not pecuniary, it must be a material interest. 47 Bom. 809; 1923 Bom. 305; 25 Bom. L. R. 689.

Interest in contract.—The expression "*interest in contract*" means a financial interest with profit or hope of profit from the contract as the object of the person interested. This must be inferred from the facts in evidence in each case. 1930 All. 38; 51 All. 864.

Under a similar provision of the Berar Municipal Law it was held that a member of a municipal board who lends money to a contractor upon the personal credit of such contractor for the purpose of a contract with the municipal board is guilty under S. 168, Indian Penal Code. 7 N. L. R. 53; 10 I. C. 577.

It is sufficient if the member is concerned in a contract with the authority though he does not participate in the profits. See *Star Steam Laundry Co. v. Dukas*, (1913) 108 L. T. 367.

The local board of S., who were the town council, having contracted with a person to supply iron railings, an alderman of the borough sold, in the way of his trade, to the contractor, some iron to enable him to complete his contract. It was *held* that the alderman was not interested in the contract: *Le Feuvre v. Lancaster* 1854 3 El. and Bl. 530; 18 J. P. 193. But as to this case see *Tomkins v. Jolliffe* (1887) 51 J. P. 247. There C, who had contracted with a local board to make certain alterations to gas fittings in the town hall, employed the defendant, a member of the board and a builder, to erect scaffolding for the purpose of enabling him to effect the alterations. It was *held* that the defendant was interested or concerned in a contract with the board.

The defendant's brother entered into a contract with a vestry under the Metropolis Management Act, 1885, and in order to carry it out borrowed money from the defendant, who by way of security took an assignment of the contract. Afterwards, the defendant was elected a member of the vestry. It was *held* that he was interested in a contract with the vestry: *Hunnings v. Williamson*, (1883) 11 Q. B. D. 533; 48 J. P. 132. Where an officer of a local board was appointed to superintend drainage works as their engineer, receiving by way of remuneration a percentage on the outlay, it was *held* that he had an interest in the contract between the board and their contractor: *Whiteley v. Barley*, (1838), 21 Q. B. D. 154; 52 J. P. 595. The defendant, a member of the local board, was employed by persons who had contracted for the performance of certain work on the board's premises to do a portion of the work contracted for. It was *held* that he had been concerned in the contracts entered into by the board.

The defendant, who was a member of a municipal corporation, carried on a business as a jeweller and optician. The optical department was managed by his son, who was not a partner but a paid employee. A contract was made between his son in his own name and the corporation for the supply of spectacles for the children of the schools controlled by the Corporation Education Committee. The contract was carried out by the son, the spectacles were paid for by him with his own cheque, and he received payment in his own name from the corporation and paid the amount so received into his own banking account. The spectacles were supplied in cases bearing the son's name, but the defendant's business address,

some of the cases being taken at the expense of the defendant out of his stock. The son alone derived direct pecuniary benefit from the contract, but the shop was provided, and the establishment expenses paid by the defendant, and the fact that the spectacle cases bore his address helped to advertise his business with the consequent probability of increasing his custom. It was *held* that on these facts there was evidence in which the court could find that the defendant had interest in a contract with the corporation. *England v. Inglis*, (1920) 2 K. B. 636; 84 J. P. 198.

A member of a school board sold a quantity of gravel and sand to one who had contracted with the board to build certain schools. He knew that they were to be used in the building of schools, and it was *held* that he had committed an offence against the Elementary Education Act, 1870, S. 34, as having been concerned in work done under the authority of the board: *Barnacle v. Clarke*, (1900) 1 Q. B. 279; 64 J. P. 87. So also, a member of the council who supplied coal to the trustees of a school who had an agreement with the council by which the latter actually paid for the coals, was held to have an interest in such contract. *Cox v. Truscott*, (1905) 69 J. P. 174; 92 L. T. 650.

Municipal Commissioner supplying bricks to a contractor of the committee.—The mere fact that the municipal commissioner was a brick merchant and supplied bricks to a contractor engaged to build a market for the municipal committee does not not disqualify him from sitting and acting as municipal commissioner when there is nothing to show that the member had any knowledge that the contract for bricks with the contractors was likely to fall to his share nor whether, and if so, when the possibility could arise when he would have to decide between his duty to the committee and serving his own interest. 1925 Rang. 367, 92 I. C. 780.

Contract performed, dues not fully paid.—Where contractor has performed his part of a contract with a municipality and the bill for the work done has been finally passed, but the whole or part of the dues remain unpaid, the contract is not at an end in the sense that it is discharged in its entirety and that the contractor has no further interest in it. Nor does the bill in such circumstances extinguish the original contract and establish in its place a mere relationship of debtor and creditor between the contractor and the municipality in the sense that the subsisting interest of the contractor is not a mere interest in the bill regarded as security for payment of money due; consequently any one on the side of the contractor having an interest in the contract would be disqualified to stand for election as a commissioner till the date of the discharge of the contract.

The words of S. 48 may be construed as meaning the existence of a contract to which the commissioners are a party, irrespective of the fact that the other party has or has not performed his part of the contract. *Cf.* 1931 Cal. 258; 58 Cal. 180.

A member of the board acquiring share or interest in any contract must obtain permission in writing of the commissioner. Where there is doubt as regards the interest, the commissioner should be applied to for permission. 1930 All. 739; 128 I. C. 394.

Contract.—A demise of Rooms has been held to be a contract within the meaning of the corresponding section of the Public Health Act. *Burgess v. Clark*, 14 Q. B. D. 735.

Directly or Indirectly.—In the original section before its amendment the words “directly or indirectly” interested were found. These have been omitted, though in the administration rules the words are still found to exist.

Contracts of the committee.—The contracts given by the educational committee of the board under the provisions of S. 63-A and S. 65-A which empower the educational committee to give contracts for educational purposes are given on behalf of the board and come within S. 34.* 145 I. C. 147, 1933 All. 543.

S. 34, sub-S. (1) refers in general terms to a “member of the Board” and is not limited to members of particular committee.

Previous sanction not required for prosecution under S. 168 I. P. C.—S. 197 Cr. P. C., as amended does not require previous sanction for taking cognizance of a complaint under S. 168, I. P. C. *Cf.* 1928 Lah. 72, 8 Lah. 647.

Where a complaint was preferred against a member of the municipal committee alleging that he had committed an offence under S. 168 as he was a partner in a grain contract taken in the name of a third person for the committee: *Held*, previous sanction of local Government was not necessary.

Election Rules and administrative Rules.—Rules for election generally disqualify a person from becoming a member if he has any interest in contracts with the committee. So a member becoming interested in a contract will be liable to removal under S. 16.

*Section refers to provision corresponding to S. 48 of Punjab Act.

Rule 3-A of Administration Rules prohibit members from being present or for taking part in any proceedings in which such members or their specified relations are directly or indirectly interested.

The word "indirectly" would include other indirect connections. Thus it was held under the English Corporation Act, that a lease granted by a corporation to a trustee for a councillor was a disqualification: *Simpson v. Ready*, 12 M. and W. 736. Interest as a sub-contractor in a contract made with a corporation would similarly fall within the section. *Tomkins v. Jolliffe*, 57 J. P. 247.

For further notes see Arnold's "Law of Municipal Corporations," 6th Edition, pp. 15-16.

Privileges and Liabilities.

49. No suit shall be instituted against a committee, or against any officer or servant of a committee, in respect of any act purporting to be done in its or his official capacity, until the expiration of one month next after notice in writing has been, in the case of a committee, delivered or left at its office, and in the case of an officer or servant, delivered to him or left at his office or place of abode, stating the cause of action and the name and place of abode of the intending plaintiff; and the plaint must contain a statement that such notice has been so delivered or left:

Suits
against com-
mittee and
its officers.

Provided that nothing in this section shall apply to any suit instituted under S. 54 of the Specific Relief Act, 1877.

Notes.

S. 38 of the old Act.

Analogous Law:—

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| <p>S. 363, Bengal District Municipal Act, 1884.</p> <p>S. 535, Bengal Municipal Act, XV of 1932.</p> <p>S. 49, Behar and Orissa Municipal Act, 1922.</p> <p>S. 206, Bombay Municipal Boroughs Act, 1925.</p> <p>S. 167, Bombay District Municipal Act, III of 1901.</p> <p>S. 527, Bombay City Municipal Act, III of 1888.</p> <p>S. 42, Burma Municipal Act, III of 1898.</p> <p>S. 538, Calcutta City Municipal Act, III of 1923.</p> | <p>S. 273, Cantonment Act, II of 1924.</p> <p>S. 48, Central Provinces Municipal Act, II of 1922.</p> <p>S. 397, Madras City Municipal Act, 1919.</p> <p>S. 350, Madras District Municipal Act, V of 1920.</p> <p>S. 204, Rangoon City Municipal Act, 1922.</p> <p>S. 326, United Provinces Municipalities Act, 1916.</p> |
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English Law:—

- S. 1, Public Authorities Protection Act, 1893.
- S. 264, Public Health Act, 1875.

Caution.—It will be observed that the corresponding provisions of the other provincial municipal Acts differ.

materially from the provisions of the Punjab Act. None of these provincial Acts has a provision with regard to suits for injunctions. The Bengal, Madras and Bombay Acts and the Cantonment Act contain clauses as to periods of limitation for such suits and other clauses dealing with dower of tendering amends.

The decisions of the several high courts on corresponding sections of the other provincial Municipal Act must therefore be applied with some caution.

The limitation provided in some of the corresponding sections of other provincial Acts is six months while without such provisions Article 2 of the Limitation Act will apply—which provides a period of 90 days. The time required for notice will be excluded from computation of 90 days under Cl. 2 of S. 15 of the Limitation Act.

Object of the section.—The object of the provision appears to be to give municipal bodies or officers who in the *bona fide* discharge of their public duties may have committed illegal acts not justified by their powers, an opportunity of tendering a sufficient amends for such acts before being harassed with an action. 8 Bom. 421 & 4 I. C. 32, 32 Mad. 371.

S. 192 of U. P. District Board Act, 1922 (= S. 49 of Punjab Municipal Act) is intended for the protection not only of the board and its officers and servants, but also of the members of the board. So long as defendant is a member of the board and the suit is instituted in respect of an act done or purporting to have been done by him in his official capacity, the section would be applicable, no matter whether the plaintiff is a stranger or the board or any other officer or servant. The protection is for a defendant and does not take into account the status of the plaintiff in the suit. 1933 All. 104, 1932 A. L. J. 1081, 143 I. C. 462.

Cases in which notice is not necessary.—It has been settled law that the provisions of the English statute analogous to this section do not apply to claims arising out of contracts or *quasi*-contracts, but do apply to claims arising out of torts or *quasi*-torts done under colour of, or in carrying out the provisions of, the statute. Relying on this principle the Bombay High Court held that a suit against the municipality of Bombay for compensation for land acquired by the municipality under S. 299 of Act III of 1888 (Bombay City Municipal Act) is not an action of tort or *quasi delict*, but it is a simple action for the price of land, and hence no notice was necessary. 19 Bom. 407.

No notice is necessary in actions based on contracts (22 Bom. 301), such, for instance, as a suit for specific perform-

ance of a contract or for damages for breach thereof or for price of goods supplied. 22 Bom. 637; 2 Mad. 124; 65 I. C. 105; 1926 Pat. 462 (1).

No notice is necessary in a suit to recover a deposit. 16 Mad. 474.

A suit based upon contract is excluded from the purview of S. 167* of Bombay District Municipal Act, 1901 as it may fairly be assumed that every person knows that the law expects him to act according to his contract and not to break it and where he has not acted in accordance with his contract he has thereby knowingly disregarded the provisions of the statute and cannot expect the protection given by it. No notice is, therefore, necessary nor is the rule of six months' limitation applicable to such a suit. (Case law considered.) 1930 Sindh 209; 123 I. C. 237.

Claims arising out of contracts are not governed by S. 49 as the words "anything done or purporting to be done under the Act or any rule or bye-law made under it" in S. 73,† Central Provinces Local Self-Government Act must be interpreted as relating only to an act done or purporting to be done in direct execution of the Act or of a rule or bye-law. Breach of a duty imposed or exercise of a power conferred, by a contract is not such an act. 1930 Nag. 179, 123 I. C. 903.

When there is a specific previous contract under which the act is done then the act so done or omitted to be done is not so done or omitted to be done by virtue of the statute. 1930 Sindh 209.

Note.—The Allahabad view is different, *vide* 1930 All. 365 and 1923 All. 267.

In a suit by a contractor for the price of the work done notice under S. 49 is not necessary as the suit was not instituted for any act done by the committee but in respect of an act done by the contractor. Article 56 of Limitation Act applies to such suits. 1928 Oudh 297, 109 I. C. 639.

In suit for damages for breach of contract no notice is required. 1933 Bom. 164; 35 Bom. L. R. 55; 57 Bom. 67.

A municipal contractor stocked building materials on the land of the lessee of a *mandi*. The latter sued the contractor for an unlawful act in stocking these materials on his land and thereby preventing him from using it:

* Cf. S. 49 of the Punjab Municipal Act.

† S. 49 of the Punjab Municipal Act,

Held, the suit was maintainable and S. 324* did not apply. 1922 All. 477, 64 I. C. 93; 43 All. 614, 19 A. L. J. 521.

A contractor was given lease for the right to collect octroi on certain articles and the agreement between the board and the contractor provided that the contractor will only be entitled to collect the amount at certain rates. The agreement further provided that if the contractor contrary to the terms collected octroi at greater rates he shall be liable to pay a fine not exceeding Rs. 50 imposed by the president. The president imposed a fine of Rs. 20 on the contractor in respect of illegal and excessive collection made by his agent. Fine was not paid and a suit was instituted for recovery.

Held that the suit was not maintainable although the acts of the defendant's agent amounted to a criminal offence and no criminal proceedings were taken against the agent.

It is doubtful whether the doctrine that a person injured by a felonious act cannot seek civil redress without prosecuting the felon in the criminal courts, applies in India; and the doctrine does not apply where a principal is sued in the civil courts in respect of the wrongful acts of his agent.

Held, also, that the agreement in question was not a bail bond, or recognisance, within the meaning of the Exception to S. 74 of the Contract Act, and though given for the performance of a public duty, it was not given under the provisions of any law. The Exception to S. 74 did not apply and the plaintiff was entitled to reasonable damages under the section.

Held also, that the suit was based on contract; and for purposes of limitation fell within Article 68 or 115 of Schedule II of the Limitation Act and not under Article 6 of the Schedule. 31 Mad. 54, 17 M. L. J. 537.

A suit for compensation for breach of contract does not require a previous notice. Suit for compensation for breach of contract is not governed by Art 2 of the Limitation Act. 28 I. C. 45.

The various authorities relied upon were based on the peculiar wording of the section of the Madras Municipal Act. Reliance was placed on the clause relating to offer of amends. This clause was interpreted to relate to suits for

* S. 224 of the Punjab Municipal Act.

torts for which amends are to be offered. If contracts had been contemplated, the words used would have been compensation or damages. 28 I. C. 45.

In suits relating to declaration of title to immovable property or in suits for possession brought against the municipality, no notice is necessary: 16 Mad. 317; 22 Bom. 289 F. B.; 6 Cal. 8; 4 All. 102, *affirmed* in 4 All. 339. Notice will be necessary for actions for the possession of land whereof the plaintiff has been dispossessed by the municipality acting or purporting to act under some section of the municipal Act, which empowers them to take possession of, or oust any one from, that land. Per Parsons, J., in 22 Bom. 289.

In a suit brought against a municipality to recover possession of land taken by it, for damages for putting down a wall on the land and for injunction:

Held that as regards damages the suit required a previous notice but not as regards possession. 22 Bom. 605.

No notice is required in a suit for injunction. 22 Bom. 636.

Under S. 193 of the Punjab Municipal Act the committees have power to refuse sanction for the erection of a building in any case in which there is a dispute as to the title of the land to be built upon. In any suit for declaration of title to such land on the refusal of the committee to sanction the plan, notice will presumably be necessary under this section. In a case, however, arising under similar circumstances previous notice of one month was not held to be necessary for bringing against a municipal committee a suit for a declaration that the plaintiff is the owner of a certain piece of land and that the municipal committee who refused the plaintiff permission to build on it alleging that it was their property had no right to do so. 32 P. R. 1914, 23 I. C. 317.

Notice was sent by the municipality informing the plaintiff that he had no right to a certain property and that he should establish his right by a suit. Plaintiff filed a suit for declaration of his title:

Held, that it is not a case which can come under S. 261* of the Madras District Municipal Act, 18 4 for which notice of suit is necessary. 1926 Mad. 235, 92 I. C. 18.

* S. 49 of the Punjab Municipal Act.

Suit by committee against its own officers.—It was doubted in 46 All. 175; 1924 All. 46 if S. 326 of the United Provinces Municipal Act (S. 49 of Punjab Municipal Act) applies to such a suit.

One month's notice.—It is not required that the notice be one month's notice commencing on the date of the Act complained of, but one month's notice in writing of the intended suit. 1933 Sindh 258.

Suits claiming two reliefs.—A suit for mandatory injunction to build a *khal* and a perpetual injunction restraining the municipal committee from building drain on plaintiff's property is not entirely illegal. The suit may be dismissed as regards the illegal relief (mandatory injunction) claimed and decreed as regards the legal relief. 1931 Lah. 124. See 22 B. 605.

Suit for refund of professional tax and other taxes.—S. 49 applies only to suits for compensation and for damages.

A suit for a refund of a professional tax that was illegally levied cannot be described as a suit for compensation and for damages, and it cannot be said that it is not maintainable for want of notice prescribed. 1931 Mad. 520, 132 I. C. 113, 60 M. L. J. 600.

A suit by a company to recover money wrongly collected from it by a municipality as tax, is not one for "damages or compensation," but is an equitable action for money had and received and, as such, the provisions of S. 49 either as regards the necessity for notice or the limitation of six months do not apply to it. Cf. 1929 Mad. 409, 52 Mad. 207, 56 M. L. J. 525, 120 I. C. 867.

Suit for damages—Article 2 of Limitation Act.—A claim for the refund of a specific sum, representing the difference between the octroi duty illegally realised by a municipality and the duty which the municipality should have legitimately realised under the law, is in the nature of a claim for money had and received by the defendant municipality for the plaintiff's use and is not a claim for compensation or damages. Such a claim is governed by Article 62 of the Limitation Act, 1877. 6 I. C. 401, 32 All. 491.

A suit was brought against the chairman and accountant of a *panchayat* union for damages for malicious prosecution more than six months after the close of the criminal proceedings:

Notice was *held* to be not necessary unless it were proved that the act complained of was done by servants of

the taluk board within the scope of their authority as such, acting or purporting to act under this Act. 13 Mad. 442.

Cases within the Section.—A person suing the municipality for refund of tax illegally levied from him as house tax, is bound to serve the municipality with a notice as required by the Act. *Cf.* 8 Bom. 421.

The defendant who was a member of a municipal board and was charged with supervising the sanitation of the town reported to the secretary of the board that dirty water was allowed to flow from a house of the plaintiffs. The secretary ordered the prosecution of the plaintiffs but they were acquitted. Whereupon the plaintiffs brought a suit for damages for malicious prosecution. It was *held*, that as the defendant had acted in his capacity as a member of the board he was entitled to a notice under the section before institution of the suit. 10 I. C. 1; 8 A. L. J. 509.

Under a corresponding section of N. W. P. and Oudh Municipalities Act, XV of 1873, it was *held* that notice is necessary only when damages consequential on the act done by the municipal committee are claimed in the suit. The plea of want of notice cannot be taken for the first time in special appeal. 1 All. 269.

The Legislative Council can authorise a local authority to impose a ferry toll and when such toll is imposed, any sum due to the local board from a lessee can be recovered as an arrear of land revenue. Hence any act purporting to recover such sum would be an act purporting to have been done in pursuance of the Act, and so a month's notice would be necessary before filing a suit. 1930 Sindh 176.

Certain persons, who were members of the managing committee of a municipality ordered, during their term of office, dust-bins for the municipality and paid for them out of the municipal funds. The municipality subsequently instituted a suit against the members for recovery of the amount paid by them on the ground that the dust-bins were not in accordance with the contract and that the managing committee had issued the completion certificates negligently:

Held that the suit was not one for misapplication of money and did not fall under S. 42 of Bombay District Municipal Act. The cause of action against the defendants was for damages for negligence in giving completion certificate, and S. 167 applied to the case and the suit was bad for want of notice under S. 167. 1932 Bom 562, 34 Bom. L. R. 1216, 56 Bom. 448, 140 I. C. 213.

Under a corresponding provision of United Provinces Act it was *held* that the provision is not confined to suits for damage founded upon tort and that the words "cause of action" are of sufficient amplitude to cover cases involving the infraction of an absolute right or of a right arising out of a contract and also of a right to compensation flowing from tort.

A conservancy contractor under an agreement with the Municipal Board of Allahabad agreed to remove rubbish from certain parts within municipal area on a monthly remuneration of Rs. 325. The contract terminated on 31st March 1924. The contractor alleged that the municipal board unlawfully and in violation of the agreement withheld the payment of Rs. 446. A registered notice was sent on 27th July 1925, and the present suit to recover the amount of Rs. 446 was instituted on 15th January 1926 against the municipal board:

Held, that the deduction made by the municipal board month after month amounted to a refusal to pay the amounts so deducted and that each of these occasions afforded the contractor a separate cause of action. 1930 All. 365; 122 I. C. 742.

S. 80, C. P. C.—A municipality constituted under District Municipalities Act cannot be described as a "public officer" under sub-clause (f) or (g), of Cl. 17, S. 2, C. P. C., and there is no need to give two months' notice to the municipality under S. 80 before instituting suit against it. 1930 Mad. 844; 128 I. C. 161.

A suit by plaintiff to recover the deduction for non-performance of contract made from the deposit made by plaintiff will come within the provisions of S. 167 of Bombay District Municipal Act. 1922 Bom. 380, 46 Bom. 123, 64 I. C. 357, 23 Bom. L. R. 881.

Meaning of "act"—The term "act" in S. 80 includes a threat to do a future injurious action when that threat is conveyed through the performance of any action, such as speech, writing, sending a notice or message and so forth.

I understand "act" in this context as including words, spoken or written, which may cause the plaintiff to apprehend some injury in the future. If there was no such act it is not clear what ground the plaintiffs had to anticipate a threatened invasion of their supposed right, so as to give an occasion for instituting this suit for an injunction. I would, therefore, allow this appeal and dismiss the plaintiff's suit with costs throughout as notice was held to be necessary even in a suit for injunction. 58 I. C. 885, 39 M. L. J. 151.

Act purporting to be done, etc.—These words do not include acts which are *not* done under this Act whether they are illegal or are not in accordance with its provisions. If a person knows that he has not under a statute authority to do a certain thing and yet intentionally does that thing he cannot shelter himself by pretending that the thing was done with intent to carry out that statute: *Selmes v. Judge*, L. R. 6 Q. B. 724. Thus there is no provision in the Municipal Act for the withdrawal of the sanction for erecting a building. Where such a sanction was withdrawn and a suit for damages brought, it was *held* that the revocation of the sanction was not done nor did it purport to have been done under the Act, and that the suit for damages having been based upon such withdrawal, the limitation of three months did not apply to such a suit. 30 Cal. 317.

A person seeking the protection of the Act cannot claim that his conduct has any relation to the execution of the Act if he knowingly and intentionally acts in contravention of its provisions. So where the amount payable as refund was ascertained and plaintiff's right to receive it admitted, the refusal to refund would be a deliberate and conscious contravention of the provisions of the Act and such conduct would disentitle the person to notice. 25 Bom. 387.

Act purporting to be done in official capacity.—If the act was one such as is ordinarily done by the officer in the course of his official duties, and he considered himself to be acting as a public officer and desired other persons to consider that he was so acting, the act clearly purports to be done in his official capacity within the ordinary meaning of the term "purport." The motives with which the act was done do not enter into the question at all. *

Suit for libel against a member of the municipal board or an officer of the municipality for an act which *prima facie* appears to be done in his official capacity requires a notice under the Municipal Act. 1930 All. 704; 124 I. C. 705.

Act includes omission.—S. 326 (=S. 49 of Punjab Act) of the United Provinces Municipalities Act should be interpreted according to the terms of that section; no decision as to the differently worded terms of other sections of other Acts are of assistance. The words "in respect of an act done" would include an omission because omission must have reference to some act or series of acts. A board must be deemed to have acted in its official capacity, even though its action was not taken directly under any provision of the Act, but indirectly in pursuance of a contract executed directly under the provisions of the Act, for

even in the latter case it must be held to have acted in an unofficial capacity. A board indeed can only act in an unofficial capacity when it acts otherwise than under colour of any power conferred on it. The exceptions provided for in sub-Ss. 3 and 4 show that the section was meant to include suits of every description, even suits based on contracts. 1926 Oudh 388, 99 I. C. 643.

The expression "for anything done or purporting to be done" in S. 167 of the Bombay District Municipal Act means that the section applies where something has been done, and not where there is an apprehension only that something will be done. A suit, therefore, against a municipality to restrain an apprehended injury is not bad merely because the notice required by the section was not given; in such a case no notice is necessary. 56 I. C. 527.

In a suit for damages against a vice-chairman for having wrongfully issued a distress warrant, it was held that the act of the vice-chairman was in pursuance of the Act and notice before suit was necessary. In such cases it cannot be contended that as the act complained of could not have been lawfully done under the authority of the Act, the act could not be said to be an act purporting to be done in official capacity. The protection of the act was not confined to cases where the party had done an act which could be justified. An act is to be regarded as done in pursuance of a statute if the doer had a reasonable and *bona fide* belief that he was so acting as remarked in *Richard Spooner v. Juddow* (1858, 4 M. J. A. 353).

Section will have no application when the servant or officer is not sued in his official capacity. 1 I. C. 514.

If a party *bona fide* and not absurdly believes that he is acting in pursuance of a statute, he is entitled to the special protection given by the section although he has done an illegal act. 48 Cal. 45; 59 I. C. 572.

In a suit brought against a municipal committee to recover the value of certain bricks alleged to have been wrongfully seized and appropriated by the committee, the lower court held, on the authority of S. 19, Act IV of 1873, that the suit was barred by limitation in that it was not instituted until after the expiration of three months from the accrual of the right to sue: *Held* that whether the suit was regarded as founded on tort, as the plaintiff alleged, or on contract as the lower court appeared to have regarded, it was not barred as it was not alleged and there was no pretence for alleging that the defendants took the plaintiff's

bricks in the exercise of any powers given to them or to the municipal committee by the Municipal Act or in the belief that they had power under the Act to take the bricks. P. R. 79 of 1884.

A mortgagee refused to give up part of the mortgaged land when the mortgage money was paid off. He remained in possession and sold the land to the municipality. The mortgagor subsequently sued the municipality and its vendor to recover possession: *Held* that no notice was necessary. The section does not apply to actions of ejectment brought against a municipality. Such an action brought to try the title to the land is not an action for anything done or purporting to be done in pursuance of the Act. 22 Bom. 283 (*Distg.* 18 Bom. 19). *See also* 22 Bom. 289 and 22 Bom. 605.

A suit for permanent injunction is not a suit for anything done or purporting to be done in the pursuance of the Act but to prevent the municipality from doing what the plaintiff alleged to be an illegal act. 22 Bom., pp. 283, 289, 605, 636; 25 Bom. 142; 4 I. C. 32; 19 Mad. L. J. 333 F. B.; 1 I. C. 514.

A sum of money was collected from an *inamdar* as land cess under S. 57 of the Madras Local Boards Act, 1884. The amount had been assessed by the Collector of the district under S. 64, collected by him and subsequently paid to the credit of the District Fund, under S. 19 of the said Act. The *inamdar* filed a suit against the president of the district board to recover the amount on the ground that it had been illegally collected from him. There was no claim for damages. On its being objected that the suit was wrongly brought against the president of the district board:

Held, that the suit was not maintainable. The assessment and the collection of which plaintiff complained were not the act of the defendant, who could not be called upon to make good the amount said to have been wrongly collected merely because it had eventually been paid over to the credit of the district board. 24 Mad. 114, 7 I. C. 799.

Officer purporting to act.—Per Sadasiva Aiyar., J. : An act done by a public officer would ‘purport’ to be an act done in his official capacity not only if it was properly and rightly done by him in such capacity and within his powers, but also if it has such a reasonable resemblance (though a false or pretended resemblance) to a proper and right act that ordinary persons could reasonably conclude from the character of the act and from the nature of his official capacity.

But if the act done is so outrageous and extraordinary that no reasonable man could detect in it any resemblance to any act which the powers of such an officer could allow him to do on the facts as represented and declared by such officer, his mere allegation that he did the act in his official capacity would not suffice.

The question of the good faith or the bad faith of the public officer, either as regards his belief in the legality or propriety of his act or the limit of his powers or the existence of facts justifying the exercise of such powers, is irrelevant to the consideration of the question whether the officer is entitled to notice under S. 80 of the Civil Procedure Code.

Per Spencer, J.: The word 'purporting' covers a profession by acts or by words or by appearance of what is true as well as of what is not true.

"It is significant that the words 'purporting to be done' are wider than 'done' or 'intended to be done' under the provisions of this act" in S. 264 of the Public Health Act, which appear to be the most comprehensive words in that Act.

"I, therefore, think that the expression 'any act purporting to be done by such public officer in his official capacity' found in S. 80 of the Civil Procedure Code means 'any act of a public officer which is intended by him to carry forth or convey to the minds of all persons who become aware of that act the impression that he did the act in his official capacity and not as an ordinary private individual and which has the effect of conveying such an impression by its seeming or appearance.' " 41 Mad. 792; 46 I. C. 86 at p. 95.

Proviso.—Even in the absence of such a proviso it has been held that no notice is necessary in suits for injunctions under S. 54 of the Specific Relief Act. 22 Bom. 283, 289 and 636.

Note.—The view held in these rulings has been overruled, *vide* 1927 P. C. 176; 51 Bom. 725 and 1930 Sindh 287.

A suit for declaration of title with an injunction cannot be said to be a suit falling under S. 45 of the Specific Relief Act, especially when the suit in substance is one for declaration of title and the relief by way of injunction is only an ancillary relief. 47 I. C. 848; 41 All. 162.

Sufficiency of notice.—In a suit for damages for negligence of a contractor the municipality contended that the notice was not sufficient. The notice stated "that one S. J.,

a contractor under you, and such being your agent and servant excavated a trench, etc." It was argued that this was not a good notice as it only alleged a cause of action arising out of the acts of the defendant's agents and servants and not out of the acts of a contractor:

Held, that the notice was sufficient. The section only required the notice to state with reasonable particularity the cause of action, and this was done. The individual by whom the damage was done was specified and the acts which caused the damage were clearly set forth. 17 Bom. 307.

In a suit against the municipality for damages sustained by plaintiff by reason of an accident occasioned to his horses through the ill-repair of a road within the limits of the municipality, it appeared that at the close of a correspondence between the plaintiff and the president of the municipality, the plaintiff, in a letter headed "Madras," stated that he had directed auctioneers to sell the horses, and that he would "proceed against you by law to recover such loss or damages as I may have sustained;" and added "kindly consider this as notice of claim under S. 433 of Municipal Act, I of 1884" and that the plaintiff's attorneys, in a subsequent letter, demanded payment of Rs. 1,000, "being the damages sustained by our client by reason of the neglect to keep in proper repair that portion of the road etc.," and stated that if the sum claimed were not paid the plaintiff would be "compelled to have recourse to law to recover the sum without further notice."

Held (1) that the two letters should be read together;

(2) that the cause of action was stated sufficiently in the second of the above letters;

(3) that the plaintiff's address was sufficiently given in the first of the above letters. 14 Mad. 386.

In a suit to recover damages for the demolition of a house which had been built by the plaintiff without previous notice to the municipality, the plaintiff proved, by way of notice of action, the delivery of a letter signed by him and dated from his place of residence, which did not state where the house in question had stood, nor the date of its demolition, nor state positively that an action would be brought:

Held that the letter was not sufficient notice. 18 Mad. 503.

A notice by a person who claimed a road as his private road simply asking the commissioners to reconsider their

declaration that it was a public road is not a sufficient notice. 7 W. R. 92.

Notice to be addressed to Committee.—Where a notice is addressed to the president of the local board and it was intended not to be a notice to the president individually but to the board as represented by the president and the board has in fact received the said notice, the misdirection is immaterial. Such notice should be addressed to the board simpliciter or board by the secretary or president. 1930 Bom. 554; 54 Bom. 902.

Result of want of notice.—If no notice is given in cases within this section, the suit must be dismissed: 24 Cal. 900. In case the notice is not sufficient the suit will also be dismissed: 7 W. R. 92; 18 Mad. 503. A suit instituted before the expiry of the period of notice should be dismissed as premature. 47 I. C. 848; 41 All. 162.

Cause of action.—Plaintiff must be confined to the cause of action stated in the notice, and cannot be allowed to put forward another cause that may suggest itself afterwards. 8 Bom. L. R. 265; 34 Cal. 257.

In a suit for damages, the cause of action arises when and as the damages occur and not at such time as the plaintiff may expend money in repairing such damage. 1896 P. J. 675.

A levy of tax in each year gives a new and distinct cause of action and the payment of a tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year. Where the valuation for the purposes of a municipal tax is made annually, a fresh cause of action for any over-valuation annually arises, even if the valuation remains the same. 1892 P. J. 296.

Although the cause of action in S. 49 should not be taken in a narrow sense the object of the section being merely to inform the defendant substantially of the grounds for complaint yet the section requires a cause of action to be stated with some precision. Where the accused's cause of action has not arisen at the time of the notice the notice is invalid. Cf. 54 Cal. 969; 1928 Cal. 74.

Reconsideration gives no fresh cause of action.—No fresh period for suit can be claimed by the mere fact that the committee reconsidered their previous decision on the application of the defendant. 1925 Sind 322; 90 I. C. 44.

Damage arising after the notice.—It is a question whether or not damages arising out of subsidence referred to in the notice but arising after the date of the notice could be recovered without a fresh notice and fresh suit. If the damages arising from the subsidence be the cause of action as seems to be the result of cases, then only what is stated in the notice can be recovered and nothing arising after. 18 Cal. 91.

Plea of want of notice.—The plea of want of notice or insufficiency of notice may be taken in the course of arguments though not taken in the written statement. 5 I. C. 81, but see *contra* 1 All. 269; 16 Mad. 307.

One month's notice.—The municipality is entitled to full month's time. If the suit is instituted before the expiry of the month the suit will be rejected as premature. 8 Bom. 421; 8 Bom L. R. 265.

Suit as instituted premature, amended plaintiff.—Where a suit was instituted before the expiry of one month and the plaintiff was returned for amendment as it did not contain any mention that the notice had been given, the amended plaintiff was filed long after the expiry of one month next after the notice:

Held that the provision of law as regards notice had been sufficiently complied with. The purpose of the law is that a municipal committee should have reasonable time to answer claims made against it and for purposes like this the date of the presentation of the amended plaintiff is what the court should look to. 9 I. C. 844.

Wrong description of defendant.—A suit against the president or secretary of a municipal committee as representing the municipal committee is not maintainable. 16 Mad. 296.

Crown bound by the section.—S. 49 applies even to the Crown. Therefore a suit by the Secretary of State against the municipality for damages for injury caused to a police *sowar's* horse which put its foot into a manhole belonging to the municipality which had been left open in breach of a statutory duty cannot be instituted without giving notice as contemplated by S. 49. *Cf.* 1931 Sindh 55.

Limitation.—Some of the provincial Municipal Acts in provisions corresponding to S. 49 also provide a period of limitation for suits. In the absence of such a provision suit for damages or compensation in respect of acts purporting to be done in its or their official capacity by the committee or its officers will be governed by Article 2 of the Limitation Act. *See* 72 P. R. 1909.

Damages for tort—Limitation for such suits.—A suit for damages against a municipality for an alleged omission to complete repairs quickly and the closing of the roads at both ends by its servants out of malice would fall within Article 2 of the Limitation Act. 1926 All. 538; 48 All. 560.

A suit by the son and heir of a deceased employee of a committee for the provident fund and salary, etc., is not governed by the special period of limitation prescribed by Article 2. 1928 Cal. 54, *Confid.* in 1928 Cal. 743; 55 Cal. 1231.

In suits under S. 49 of the Act which are governed by Article 2 of the Limitation Act, when once the time has begun to run it would not be stopped from running by the mere fact that the plaintiff made an attempt to get the decision of the committee re-considered. Such re-decision or attempt at re-consideration will not give a fresh period. *Cf.* 1925 All. 276, 86 I. C. 293, 23 A. L. J. 23.

Limitation Act, §. 2.—Article 2 was held applicable even to malicious act not authorised. 1932 All. 16, 135 I. C. 558.

Suit for recovery of octroi legally taken but wrongfully refused to be refunded is governed by Article 120 and not by article 2 or 62. 25 I. C. 943, 36 A. 555.

Article 2 of Limitation Act is not applicable to suits in the nature of suits of ejectment but only to suits for damages. 6 Bom. 580.

Action for refund of tax illegally levied—Notice under S. 49.—General provisions of Limitation Act are applicable to cases for which periods of limitation are specially provided by local or special Acts. 8 Bom. 529.

Suit for recovery of refund of octroi duty is governed by Article 2 of Limitation Act. Plaintiff instituted a suit against the Municipal Board of Agra to recover a sum of money, to which he was entitled under the rules, as refund of octroi duty on goods exported by him from Agra. The suit was dismissed as having been brought beyond the period of six months prescribed by sub-section (3) of S. 326* of the United Provinces Municipal Act. The High Court was moved in revision against the order of dismissal, and it was contended that the provisions of the foregoing sub-section referred only to suits arising out of acts done inadvertently or illegally for which a suit for damages would lie, and that that sub-section did not apply to suits for money demandable

*S. 49 of Punjab Municipal Act and S. 2 of Limitation Act.

from a municipal board in consequence of a breach of contract or of a legal relation resembling a contract:

Held, that inasmuch as the plaintiff's cause of action had its origin in the refusal of the municipal board to pay a sum which it was legally bound to pay, the suit as framed was a suit for compensation within the description of suits in sub-section (1) of S. 326 and was not founded upon a breach of contract or the breach of some relation resembling a contract and that, therefore, the rule of limitation contained in sub-section (3) of the section was applicable to it. 54 I. C. 459; 42 All. 207.

Limitation for suit for damages due to revocation of sanction.—Withdrawal of sanction was an act not done nor did it purport to have been done under the act; therefore the suit for damages based on such withdrawal was not governed by special period of limitation provided under some sections of the Provincial Municipal Acts corresponding to S. 49 of Punjab Municipal Act or Article 2 of Limitation Act. 30 C. 217, 7 C. W. N. 329.

Notice by some of the plaintiffs.—Notice by two out of three joint owners is not invalid. 24 Mad. 27, 11 Mad. L. J. 117.

Notice under Section 49 not by all persons.—Where a notice is required under the Act to be given to the municipality but only two of the five plaintiffs have given the required notice, the suit is not bad for want of notice as far as persons giving notice are concerned, although all the plaintiffs have not given the required notice. 57 Bom. 270; 1933 Bom. 175, 35 Bom. L. R. 138.

Waiver.—The right to get notice can be waived and if waived the plea of want of notice cannot be raised later: (1923) 22 A. L. J. R. 26. Where a defendant himself applies to be made a party to a case he must be taken to have waived his right to notice. 1924 All. 467; 46 All. 175.

50. (1) Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a committee, if such loss, waste or misapplication is reported by the Examiner of Local Fund Accounts, or other audit authority empowered by the local Government in this behalf to be a direct consequence of his neglect or misconduct in the performance of his duties while a member of the committee; and he may after being given an opportunity, by notice served in the manner provided for the service of summonses in the Civil Procedure Code, to show cause by written or oral representation why he

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should not be required to make good the loss, be surcharged with the value of such property or the amount of such money by the Deputy Commissioner, or, if the Deputy Commissioner is a member of the municipal committee, by the Commissioner, and if the amount is not paid within fourteen days from the expiry of the period of appeal prescribed by sub-section (2) the Collector at the request of the Deputy Commissioner or Commissioner, as the case may be, shall proceed forthwith to recover the amount as if it were an arrear of land revenue, and have it credited to the municipal fund.

(2) The person against whom an order under clause (1) is made may, within thirty days of the notification of such order, appeal to the Commissioner from the order of the Deputy Commissioner, or, if the order has been passed by the Commissioner, to the local Government, who shall appoint an officer to hear the appeal; and the appellate authority shall have the power of confirming, modifying or disallowing the surcharge:

Provided that no person shall under this section be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or misapplication or after the expiry of one year from the time of his ceasing to be a member.

Provided further that nothing in this section shall be deemed to debar the aggrieved party from seeking a remedy in a civil court against an order made under clause (1).

Notes.

S. 39 of the old Act.

Recent changes.—The present S. 50 has been inserted by S. 23 of the Punjab Amendment Act, III of 1933.

Analogous Law:—

- S. 56 (2), Bengal District Municipal Act, 1884.
- S. 104, Bengal Municipal Act, XV of 1932.
- S. 53, Behar and Orissa Municipal Boroughs Act, 1922.
- S. 53, Bombay Municipal Boroughs Act, 1925.
- S. 42, Bombay District Municipal Act, III of 1901.
- S. 43, Burma Municipal Act, III of 1898.
- S. 33, Cantonment Act, II of 1924.
- S. 49, Central Provinces Municipal Act, II of 1922.

- S. 400 & Sch. V, Part III, Rules 21-23, Madras City Municipal Act, 1919.
- S. 353, Schedule IV, Part II, Rules 58-62, Madras District Municipal Act, V of 1920.
- S. 78, Rangoon City Municipal Act, 1922.
- S. 81, United Provinces Municipalities Act, 1916.
- S. 59, Punjab District Board Act, 1883.

English Law:—

- Ss. 196, 247 (7), 265 (2), Public Health Act, 1875.
- See Ss. 2 and 3 of the Audit (Local Authorities Act, 1927).

S. 50 of Act III of 1911 which has been replaced was as follows:—

50. Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a committee, if such loss, waste or misapplication is a direct consequence of his neglect or misconduct while a member of the committee; and a suit for compensation for the same may be instituted against him by the committee with the sanction of the commissioner, or by the Secretary of State for India in Council, in such court as the local Government may direct.

Audit.—The audit of municipal accounts is provided in the Account Code and the municipal accounts are subject to periodical audit under the rules prescribed under the Account Code. The right of disallowance and surcharge now introduced under the provisions of S. 50, is based on similar provisions in the Madras City Municipal Act. In England the auditors had this right [*vide* S. 247 (7) of Public Health Act and Ss. 1-3 of the Audit (Local Authorities) Act, 1927] and by the exercise of this right the municipal fund and property are protected. Similar provisions are found in the Madras City Municipal Act, IV of 1919, Schedule V, Part III, Rules 21-23, and in Madras District Municipal Act, V of 1920, Schedule IV, Part II, Rules 58—62.

Personal liability of municipal commissioners.—Under Bengal Act, III of 1864, the personal liability of the municipal commissioners was considered, and it was held that municipal commissioners and their servants incur no personal responsibility for what they do so long as they act in the line of their duty. But if they do or order to be done that which is not within the scope of their authority, or if they are guilty of negligence or misconduct in doing that which they are empowered to do, then they render themselves personally liable to an action. There is no special law extending to members of municipalities, which protects them so long as they act *bona fide*. 24 W. R. 287.

Misapplication.—Where the Secretary of State for India in Council sued to recover three sums alleged to have been misappropriated by defendant No. 1, the secretary, and the defendant No. 2, the accountant, through the gross negligence of the defendants Nos. 3 to 12, the municipal commissioners of a certain municipality: *Held*, that the section was applicable to the case and that the commissioners were liable although the misapplication had been made by some one else.

The word "misapplication" according to the context indicates that it is employed rather in the broad and popular sense than in the narrow etymological sense. There is no requirement that the misapplication must be by the commissioners themselves or by any specified persons whosoever. The scope of the section extends to a misappropriation of municipal funds by a municipal employee provided only that the misappropriation was facilitated by gross neglect of their duties by the commissioners.

Any diversion of funds, however caused, from their proper purposes would be covered by the wide term "misapplication" and it is in that wide sense that the term is used in S. 42 of Bombay Act corresponding to S. 50 of Punjab Act. It has not been restricted to a misapplication to which a member shall have been a party but has been applied expressly to misapplication which has happened through or facilitated by the neglect of the members. 40 Bom. 166; 33 I. C. 428.

Disregard of directions due to over-confidence in the honesty or others amounts to negligence.—Where it can be shown that a loss sustained by the principal is directly traceable to disregard on the part of the agent of the directions issued to him regarding the conduct of business, even though such regard may have been due to nothing worse than negligence or over-confidence in the honesty of others, such misconduct on the part of an agent is clearly actionable. 46 All. 175; 1924 All. 467.

Limitation. A suit by municipality against its executive officer for loss sustained by it owing to disregard of directions amounting to negligence or over-confidence in the honesty of others is governed by § 90 of the Limitation Act. 46 All. 175; 1924 All. 467; 80 I. C. 241.

Where during the tenure of office by the chairman of a municipal committee the manager embezzled certain moneys and the council after two years sued the chairman to recover the amount lost by reason of such embezzlement on the ground that he was liable as its agent, *held* that the relation of agent and principal did not exist between the chairman and council and that the suit was barred. 22 Mad. 342.

Right of Suit.—A municipality can itself sue for misapplication of its money. S. 42 of the Bombay District Municipal Act does not deprive the municipality of the right which it possesses under the ordinary law of suing any person whether or not he be a councillor, who appropriates the municipal property. S. 42 gives power to the Government to take action in cases in which the municipality neglects to do so. *Cf.* 1932 Bom. 562; 56 Bom. 448, 140 I. C. 213.

Disallowance and Surcharge.—The right of disallowance and surcharge is a very valuable right which the auditors possess for the protection of the municipal fund. Though the councillors of a corporation are trustees for the rate-payers, and though they are legally liable for the loss, waste or misapplication of any money or other property owned by or vested in the corporation, and though the officers and servants of a corporation are bound to protect its interests, they are not usually so careful and prudent in the management of the affairs of the corporation as they would be in the management of their own affairs.

Duties of Auditors.—The duties of an auditor are not confined to seeing that there are vouchers for the payments made. As Lord Chief Justice Russell said (in *Thomas v. Devonport Corporation* [1900] 1 Q. B. 16 at p. 21.), "I do not subscribe to the doctrine that his sole duty is to see whether there are vouchers, apparently formal and regular justifying each of the items in respect of which the authority seeks to get credit upon the accounts put before the auditors for audit. I think that is an incomplete and imperfect view of the duties of the auditors. I think an auditor is not only entitled, but justified and bound to go further than that, and by fair and reasonable examination of the vouchers to see that there are not amongst the payments so made payments which are not authorised by the duty of the authority or in any other way illegal or improper. If he discovers that any such improper or illegal payments appear to have been made, his duty will certainly be to make it public by report to the authority itself, and the burgesses who create that authority." The auditor is given the power of summoning documents required by him and when so summoned, documents cannot be refused to be shown to him on the ground that they are not relevant or relate to other matters.

The auditor is entitled to judge for himself: (*Williams v. Manchester Corporation*, [1897] 45 W. R. 412, 13 T. L. R. 299). It is obligatory upon an auditor to disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and to charge against any person responsible, the amount of any deficiency or loss incurred by his negligence or misconduct, or of any sum for which he is accountable and which he has not brought into account. The auditor must determine the legality of any expenditure and has no power to refrain from disallowing a payment which is illegal: (*Barton v. Piggot*, [1875] L. R. 10 Q. B. 86, 39 J. P. 454). Where excessive payments are made to the servants of the corporation, the auditor is entitled to surcharge: (*Rex v.*

Roberts ex-parte Scurr and others [1924] 88 J. P. 21). A civil court has also jurisdiction to make a declaration that a payment has been unlawfully made and ought to be disallowed by the auditor. (*See Attorney-General v. Morthyr Tydfil Union*, [1900] 1 Ch. 516, 64 J. P. 276.)

A disallowance must be made at the time of audit; it cannot be made after the audit has been closed, as the auditor has no power to reopen an audit. This does not mean that the auditor should sign the order of surcharge at a sessions of the audit; but it may be done afterwards: (*Rex. v. Local Government Board*, [1909] 73 J. P. 786 - 100 L. T. 434). The certificate should state the amount due, the name or names and a sufficient description of the person or persons against whom it is made and the grounds of decision. There is no power to surcharge a person not having a direct and immediate control over the funds out of which the illegal payment is made: (*See R. v. Calvert* [1898] 2 Ir. R. 266). A treasurer, for instance, cannot be surcharged, because an amount which he paid in pursuance of an order of the local authority turns out to have been an illegal payment. The ordinary practice is to surcharge one or more of the persons who sign the cheque. It is open to the auditor, however, to surcharge any person who votes for, or otherwise concurs in, the payment. Aiyangar's "Municipal Corporation," pp. 230-231.

The following extract from Lumley's "Public Health," 10th Edition, is given for the guidance of local authorities:—

As to the duty of an auditor in disallowing illegal payments, *see Barton v. Piggott* (1874), L. R. 10 Q. B. 86; 39 J. P. 454, from which it appears that he has no discretion as to disallowing a payment which is illegal. *See, however, the Local Authorities (Expenses) Act, 1887*, which provides that payments made by an authority shall not be disallowed if they have been sanctioned by the Local Government Board (now Ministry of Health).

In an Irish case it was held that there is no power to surcharge a person not having a direct and immediate control over the funds out of which the illegal payment is made, and that therefore a surveyor could not be surcharged for giving a certificate without which an illegal payment to a contractor could not have been made: (*R. O'Leary v. Calvert*, [1898] 2 I. R. 266). In *R. v. Carson Roberts* (1908) 11 K. B. 407; 72 J. P. 81, where it was held that for a council to accept a tender which is not the lowest is not of itself evidence of negligence or misconduct, Cozens Hardy, M. R., and Farwell, L. J., expressed the opinion that an auditor is authorized

and required by sub-S. 7, of S. 247, Act 1875, to decide whether any member or officer of the council has been guilty of negligence or misconduct in relation to the accounts where-by loss has been occasioned to the council, and to assess the amount of the loss. Fletcher Moulton, L. J., however, considered that the powers and duties of the auditor are strictly confined to auditing and that the words "person accounting" in the latter part of the sub-section (which requires the auditor to "charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person") mean the person who brings in accounts for audit, and that therefore when the accounts submitted are those of the council the person accounting is the council, and the auditor has no power to inquire into the negligence or misconduct of the individual members or servants of the council.

A failure to make and collect sufficient rates under S. 12 of the R. and V. A., 1925, which renders it necessary for the power of borrowing from the treasurer under sub-S. 2, *ibid.*, to be exercised or which entails the expenditure for current purposes of money raised but not at present required for other purposes, will render, if the failure is wilful, the persons responsible to be surcharged in respect of the loss of interest where the borrowed money should have been earning such interest.

Where a local authority made payments to its employees which in the opinion of the auditor were, having regard to market wages, so unreasonable as to amount to gratuities in addition to wages, and such excess was surcharged by the auditor, the court upheld the surcharge (*Roberts v. Hopwood* [1925] A. C. 578; *Roberts v. Cunningham* [1925] 90 J. P. 32; 134 L. T. R. 421; *R. v. Roberts, ex-parte Woolwich B. C.* [1926], 90 J. P. 197; 24 L. G. R. 517).

In determining what are reasonable wages local authorities must have regard to existing labour conditions. A sum paid in wages in excess of a reasonable sum may be surcharged under S. 247 (7) as an unlawful payment (*Roberts v. Hopwood*, [1925] A. C. 578; 89 J. P. 105). In that case Lord Wrenbury said at p. 612, "Wages in a particular service are such sum as a reasonable person guiding himself by an investigation of the current rate in fact found to be paid in the particular industry, and acting upon the principle that efficient service is better commanded by paying an efficient wage, would find to be the proper sum. The figure to be sought is not the lowest figure at which the service could be obtained, nor is it the highest figure which a generous employer might, upon grounds of philanthropy or generosity

pay out of his own pocket. It is a figure which is not to be based upon or increased by motives of philanthropy nor even of generosity stripped of commercial considerations. It is such figure as is the reasonable pecuniary equivalent of the service rendered. Anything beyond this is not wages. It is an addition to wages and is a gratuity. The authority is to pay not such sum but such wages as they think fit. And with regard to the expenditure of public funds Lord Atkinson said at p. 595, "A body charged with the administration for definite purposes of funds contributed in whole or in part by persons other than the members of that body, owes, in my view, a duty to these latter persons to conduct that administration in a fairly business-like manner with reasonable care, skill, and caution, and with a due and alert regard to the interest of these contributors who are not members of the body. Towards these latter persons the body stands somewhat in the position of trustees or managers of the property of others; this duty is I think a legal duty as well as a moral one, and acts done in flagrant violation of it should, in my view, be properly held to have been done 'contrary to law' within the meaning of sub-S. 7, of S. 247 of the Public Health Act, 1875."

An Irish rural council had erected labourers' cottages by means of a loan. Part of the district was created an urban district, and the 'adjustment' award directed the cottages and future liability for the loan to be transferred to the urban council. The rural council's solicitor delayed making arrangements for the formal transfer, and in the interval that council paid off further instalments of the loan. The auditor having surcharged the councillors signing the cheques, the court reversed his decision, on the ground that the payments were not "unfounded" or "illegal."

The court refused to decide whether in such a case the auditor had power to hold that the council or its members were or were not guilty of negligence as accounting persons. He had at any rate not so found (*R. v. Browne*, [1909] 2 I. R. 333).

The persons signing or countersigning the cheque are the persons "making" the payment (*Lanark County Auditor v. Lambie* [1905], 7 F. 1049); but in England any member who "authorises" an illegal payment is also liable to be surcharged, and the ordinary practice is for the auditor to surcharge one or more of the persons who sign the cheque. It is open to him, however, to surcharge any person who votes for or otherwise concurs in the payment. In *Roberts v. Hopwood*, *supra*, the surcharge was originally made upon all the members of the council, but upon the hearing of the rule *nisi*

in the divisional court, was abandoned against four members who had not voted for the increase in wages (*see per Sankey, J.*, [1924] 1. K. B. 514, at p. 250, *sub nom R. v. Roberts, ex-parte Scurr.*) *Cf. R. V. Fermanagh, JJ.*, (1910), 44 Ir. L. T. 888.

If an auditor disallows items of account and surcharges them on the person making or authorising the payment the court has power to review his decision, not only if it is erroneous in point of law, but also if it is wrong on the merits. (*R. v. Haslehurst* [1887], 51 J. P. 645 ; *R. O'Leary v. Calvert*, [1898] 2 I. R. 266 ; *R. v. More L'Ferrall*, [1903] 2 I. R. 141 ; *R. v. Carson-Roberts.*) *See Lumley's "Public Health"* 10th Edition, pp. 543—545 and p. 475.

Misconduct and negligence.—Misconduct and negligence can take various forms. Where municipal property is leased at concession rate owing to the misconduct or negligence or favour of any member, that member can be surcharged for the rent lost to the committee. Similarly where contracts are given at rates higher than prevailing rates or when the work could have been done at rates less than allowed by the committees the members or servants responsible for such loss will be surcharged, and the amount spent in excess will be disallowed.

All misapplications of municipal funds (*see Notes under Ss. 51 and 52*) will have to be disallowed and will have to be surcharged to members or officers responsible for such misapplication.

Extraordinary audit illegal.—Where an audit in pursuance of which a surcharged certificate is made on a defaulter is not one contemplated by the rules in Sch. 4, and consequently both the audit and the surcharge certificate are *ultra vires* a suit by the defaulter for an injunction restraining the municipality from recovering the surcharge from him is competent and is not affected by the remedies provided by those rules even if those remedies be held to be substituted for the ordinary remedy by suit in cases governed by the rules.

The mere fact that the defaulter appeals to the Government against surcharge and that the Government reduces the amount of surcharge does not bind him by an election to submit to an illegality and estop him from seeking justice in the court to the extent to which the surcharge is confirmed. 1932 Mad. 90.

Rules 56 to 58 as regards the auditing of accounts in the District Municipalities Act provide for one recurring audit only as the result of which defaulters can be charged

or surcharged and do not provide for extraordinary audit or reopening of audits when once they have been closed and such audits and the surcharge certificate granted in pursuance thereof are without any legal validity whatsoever. (English law discussed.) 1932 Mad. 90; 135 I. C. 452, 55 Mad. 298.

CHAPTER IV.

MUNICIPAL FUND AND PROPERTY.

Constitution
of Municipal
fund.

51. There shall be formed for each municipality a municipal fund, and there shall be placed to the credit thereof —

- (a) all sums received by, or on behalf of, the committee under this Act or otherwise; and
- (b) the balance (if any) standing at the credit of the municipal fund of the municipality at the commencement of this Act.

Notes.

S. 71 of the old Act.

Recent changes.—Cl. (c) has been converted into Cl. (b) while Cl. (b) has been entirely omitted by S. 24 of the Punjab Amendment Act, III of 1933.

The clause omitted read as follows:—All fines realized in cases in which prosecution for offences committed within the municipality are instituted under this Act or bye-laws made thereunder or under S. 34 of Police Act, 1861, or under the Prevention of Cruelty to Animals Act, 1890, or under Hackney Carriages Act, 1879 or the rules made thereunder or under any other Act or rules made under it, in which provision is made for credit of such fines to municipal fund.

Analogous Law:—

- S. 67, Bengal District Municipal Act, 1884.
- S. 105, Bengal Municipal Act, XV of 1932.
- S. 65, Behar and Orissa Municipal Act, 1922.
- S. 65, Bombay Municipal Boroughs Act, 1925.
- S. 51, Bombay District Municipal Act, III of 1901.
- S. 111, Bombay City Municipal Act, III of 1888.
- S. 71, Burma Municipal Act, III of 1898.
- Ss. 80 & 81, Calcutta City Municipal Act, III of 1923.

S. 106, Cantonment Act, II of 1924.

S. 61, Central Provinces Municipal Act, II of 1922.

S. 139, Madras City Municipal Act, 1919.

S. 119, Madras District Municipal Act, V of 1920.

S. 61, Rangoon City Municipal Act, 1922.

S. 114, United Provinces Municipalities Act, 1916.

S. 35, Punjab District Board Act, 1883.

English Law:—

S. 139, Municipal Corporation Act, 1882.

Misapplication of municipal funds.—An action may be maintained against a municipal corporation upon a contract under its corporate seal, and judgment may be recovered against the corporation, even although there may be no funds or other property available to satisfy the judgment (*Pallister v. Mayor of Gravesend* [1850], 9 C. B. 774; *Payne v. Mayor of Brecon* [1858], 27 L. J. Ex. 495; *Lewis v. Mayor of Rochester* [1860], 9 C. B. [N. S.] 401; *Bush v. Martin* [1864], 33 L. J. Ex. 17; and *Lindley, L. J. in Att.-Gen. v. Mayor of Newcastle-upon-Tyne* [1889], 23 Q. B. 4921)

Since 1835, municipal corporations in England have been in the position of trustees of their corporate property and funds (see *Arnolds v. Gravesend Corporation* [1856], 25 L. J. Ch. 776), and may be restrained by injunction from misapplying them (see *Att.-Gen. v. Aspinall* [1838], 2 M. & C 406). The same principle applies to other funds obtained under the provisions of other Acts of Parliament for purposes defined by those Acts (*Lindley, C. J., in Att.-Gen v Mayor of Newcastle-upon-Tyne, supra*). As to the individual liability of councillors who assent to a misapplication, see *Att.-Gen. v. Compton* (1842) 1 Y. & C. C. C. 417; *Att.-Gen. v. Belfast Corporation* (1855) 4 Ir. Ch. 119.

It has been decided that misapplication means expenditure *ultra vires*. The word is used in its natural and grammatical, and not in any technical, sense, and does not mean the mere non-compliance with the technical requirement of a statute; nor does it include the payment for necessary, useful, and desirable work done within the powers of the corporation at reasonable prices (*R. v Norwich Corporation* [1882], 46 J. P. 308). In *R. v. Prest* (1851), 16 Q. B. 32, the court refused to disallow a payment not legally enforceable by reason of the absence of a sealed contract.

An excessive payment is illegal, although there may be no illegality in the object of the payment (*Roberts v. Hopwood*, [1925] A. C. 578). See also *R. v. Poplar Borough Council* (1922) 1 K. B. 95 and *Roberts v. Battersea Borough Council* (1914) 110 L. T. 566. An application to quash an order for an illegal payment must be granted notwithstanding that the same payment might have been made in a legal form (*R. v. Ramsgate Corporation* [1889], 23 Q. B. D. 66.)

For further notes see Notes under S. 52.

52. (1) The committee shall set apart and apply out of the municipal fund:—

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of fund.

(a) first, such sum as may be required for the payment of any amounts falling due on any loan legally contracted by it;

- (b) secondly, such sum as the committee may be required by the local Government to contribute towards the cost of such local Self-Government Board or Inspectorate as the local Government may establish, for the purpose of advising, assisting, and supervising the work of Municipal Committees and other local bodies:

Provided that such sum shall not exceed an amount equal to one per cent. of the income for the financial year preceding the year, in which the committee is called upon to make the contribution.

- (c) thirdly, such sum as may be required to meet the charges of its own establishment, including such subscriptions and contributions as are referred to in Sections 43 and 44, and such sum as may be required for the maintenance of a police establishment under Chapter VI;
- (d) fourthly, such sum as may be required to pay the expenses incurred in auditing the accounts of the committee, and such portion of the cost of any public expenditure by the Government of India or the local Government as may be held by the local Government to be equitably payable by the committee in return for services rendered to it;
- (e) fifthly, such sum as the committee may be required by the local Government to contribute towards the maintenance of pauper lunatics or pauper lepers sent from any place in the province to mental hospitals or public asylums whether in or outside the province;
- (f) sixthly, such sum as may be due to Government in respect of the cost of maintenance by Government, on behalf of the committee, of waterworks, drainage, sewage or other works.

(2) Subject to the charges specified in sub-section (1) and to such rules as the local Government may make with respect to the priority to be given to the several duties of the committee, the municipal fund shall be applicable to the payment, in whole or in part, of the charges, and expenses incidental to the following matters within the municipality, and with the sanction of the Commissioner outside the municipality, namely:—

- (a) the construction, maintenance, improvement, cleaning and repair of all public streets, bridges, town walls, town gates, embankments, drains, privies, latrines, urinals, tanks and water-courses;

- (b) the watering and lighting of such streets or any of them;
- (c) the construction, establishment and maintenance of schools, hospitals and dispensaries, and other institutions for the promotion of education or for the benefit of the public health, and of rest-houses, sarais, poor-houses, markets, encamping-grounds, pounds and other works of public utility, and the control and administration of public institutions of any of these descriptions;
- (d) grants-in-aid to schools, hospitals, dispensaries, poor-houses, leper asylums, and other educational or charitable institutions;
- (e) the training of teachers and the establishment of scholarships;
- (f) the giving of relief and the establishment and maintenance of relief works in time of famine or scarcity;
- (g) the supply, storage and preservation from pollution of water for the use of men or animals;
- (h) the planting and preservation of trees; and the establishment and maintenance of public parks and gardens;
- (i) the taking of a census, the registration of births, marriages and deaths, public vaccination and any sanitary measure; and
- (j) the holding of fairs and industrial exhibitions;
- (k) the preparation and maintenance of a record of rights in immoveable property;
- (l) all acts and things which are likely to promote the safety, health, welfare or convenience of the inhabitants, or expenditure whereon may be declared by the committee, with the sanction of the local Government, to be an appropriate charge on the municipal fund.

(3) Notwithstanding anything contained in the foregoing sub-sections of this Act no charges or expenses shall be paid from the municipal fund incidental to any matter which has been specifically declared by the local Government by general or special order to be a matter in regard to which no expenditure shall be met from the municipal fund.

(4) Subject to the provisions of this Act and the rules and bye-laws made thereunder it shall be the duty of the presi-

dent and of any member presiding at any meeting of the committee or of a sub-committee to disallow the consideration or discussion of any matter for which provision is not made in Section 52 or any other section of the Act.

Notes.

S. 72 of the old Act. The Cl. (k) was newly introduced in the Act of 1911 and by Cl. (h) the expenditure on maintenance of public parks and gardens was made a legitimate expenditure.

Recent changes.—Cls. 3 and 4 have been newly added and while in Cl. 1 considerable changes have been introduced. Committee will now be required to contribute toward the cost of local self-government board and inspectorate to be established by the Government under the Amendment newly introduced—sub-Cls. (d), (e) and (f) are new.

Expenditure specifically declared to be not chargeable to municipal fund shall not be incurred.

Cl. 4 prohibits discussion of matters which are not covered by S. 52. Discussion of political matters will thus be disallowed.

Analogous Law :—

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| Ss. 68 & 69, Bengal District Municipal Act, 1884. | Ss. 109, 116-117 and 117A and 171, Cantonment Act, II of 1924. |
| Ss. 107-109, Bengal Municipal Act, XV of 1932. | Ss. 50, 51, 52 & 63, Central Provinces Municipal Act, II of 1922. |
| Ss. 67, 68, 70, 213, 222 & 275, Behar and Orissa Municipal Act, 1922. | Ss. 174, 176, 184, 198, 204, Madras City Municipal Act, 1919 |
| Ss. 66, 68, 70 & 71, Bombay Municipal Boroughs Act, 1925. | Ss. 136-37, 145, 153, 162, 171, 227, Madras District Municipal Act, V of 1920. |
| Ss. 52 & 55-56, Bombay District Municipal Act, III of 1901. | Ss. 25, 26 & 62 Rangoon City Municipal Act, 1922. |
| Ss. 63, 61, 623/52 (1), 118/52 (1), 330-2, 336/2 & 454, Bombay City Municipal Act, III of 1888. | S. 7, 8 & 120, United Provinces Municipalities Act, 1916. |
| S. 72, Burma Municipal Act, III of 1898. | S. 20 and 37 of Punjab District Board Act, 1883. |
| Ss. 94 (2) (b) 116, 250, 267, 296-7, 366, 392, 465 & 477 Calcutta City Municipal Act, III of 1923. | |

English Law :—

- S 140, Municipal Corporation Act, 1882.

It has been decided that expenditure from municipal funds on (1) bands, (2) volunteer corps, and (3) the construction and repair of religious edifices is not warranted.

Functions. — Municipal functions are either imperative (those imposed by statute which the committee must do) and discretionary (those which the committee is at liberty to undertake or ignore - a matter of legislative discretion and not subject to judicial supervision). So far as committees in the Punjab are concerned there were no imperative functions laid down by the legislature. Under certain sections as amended by Act II of 1923 the Government can make the function obligatory. *See* Ss. 96 and 145 and under the recent Amendment Act III of 1933 the Government can make certain functions, *e.g.* 125 (4) also obligatory.

Purposes of the Act or public purposes.— The purposes on which municipal funds are applicable are public purposes. The several matters enumerated on which municipal fund can be spent are public purposes or purposes of the Act. While no definition can be given that will exactly distinguish those purposes which are public from those that are private, it may safely be said that the purposes is public when all the inhabitants are interested in the work, as public schools, where the children of any inhabitant may attend; libraries, because for the education of the people, and open to all alike; water-works controlled by the municipality because every resident may have water; alms houses and insane institutions, because open to all who are unfortunate enough to require their aid or care; likewise, hospitals for the same reasons; police or fire departments, as well as the necessary buildings to house and localise them, for the protection and convenience of the public; courts to enforce the law; and so one can enumerate all the known public conveniences and necessities to be found in a city, country and town, but in all the public works or purposes it will be found that the municipality has the care and supervision of the same, and that the humblest citizen is entitled to the same enjoyment, or same care and protection and in the same respect, as the most influential. The distinguishing feature between a private and a public work or purpose is that, in the former case, the supervision and gains are vested, in and received by, but a few of the inhabitants, and sometimes by non-residents of the municipality, while in a public work or purpose the care and supervision are lodged in public offices, and the gains, if any, belong to the municipality. Aiyangar's "Law of Municipal Corporations," p. 259.

In 1854, the East India Company granted the land in suit to the predecessors-in-title of the defendant for a term of ninety-nine years. A proviso was inserted in the lease reserving to Government the right to resume the land for "any public purpose." In 1908, the Government wanted to resume

possession of the land for the purpose of providing suitable house accommodation for Government officials in Bombay:

Held, that the provision of suitable house accommodation for Government officers in Bombay was "a public purpose" within the meaning of the lease. "Public purpose" includes any object which secures the good of the public by securing the efficiency of those servants of the Crown on whose service the public good materially depends.

The mere fact that the Government will charge a moderate rent not such rent as the letting value of the property will yield in the market—cannot alter the essential character of a building as one used for a public purpose.

Per Batchelor, J.—The phrase "public purpose" includes a purpose, that is, an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned. 12 I. C. 871.

Misapplication.—The municipal fund cannot be spent for any purpose not mentioned expressly or impliedly in the section. Any application to other than such purposes is *ultra vires* and may be restrained by injunction. 22 Bom. 646.

A corporation cannot apply the municipal fund for any purposes other than those specified by statute and may be restrained by injunction if it attempts to misapply the said fund. The persons ordering payment may be directed to pay the costs of the proceedings. The payment of money under contracts not legally valid is not a misapplication of the municipal fund. It can also spend money out of the municipal fund for defending itself and its property, rights or powers. Unless permitted by statute, a corporation cannot spend moneys for entertaining distinguished persons or others, or for purposes such as the purchase of a gold chain for the chairman, or for travelling expenses incurred by members of the Council. Unless also expressly provided for by statute, a municipal corporation cannot spend its money for carrying on a trading business nor can it pay the costs incurred by its officers in action brought against them arising out of the discharge of their duties; nor can it indemnify their officers against costs incurred in respect of action taken by them in regard to matters outside their jurisdiction. If the expenses are within the powers conferred upon municipal corporations by statute, their allowance by municipal authority is conclusive of their validity; but if they are *ultra vires*, they are subject to challenge

before the courts. It should, however, be observed that if the expenses are in the discretion of the municipality, the courts will not revise the discretion *bona fide* exercised. Aiyangar's "Law of Municipal Corporations," pp. 106-107.

The word "misapplication" in S. 42 means the wrong application of funds - the use of funds for purposes outside the scope of the Act. The use of funds for the maintenance of primary schools which the Government inspectors are not allowed to inspect is not "misapplication." 1925 Bom. 278; 27 Bom. L. R. 371, 88 I. C. 43.

Government can prohibit, by passing special orders, the expenditure of municipal fund on schools of which it does not approve and therefore payments made by a municipal chairman for defraying expenses of these schools subsequent to an order of Government withdrawing recognition of such schools are illegal being made contrary to the Government's orders prohibiting such expenditure and the latter will be entitled to surcharge the amount on the person making or authorizing the making of such illegal payments, all auditors have specially been authorized to make surcharges under the Act.

Government orders issued by order of the Government Ministry of Local Self-Government and signed by the Secretary to Government though required by Rule 37 to be issued by the Governor-in-Council are valid in view of S. 49 (1) of Government of India Act. 49 Mad. 49; 1926 Mad. 297.

When a suit was brought by a rate-payer restraining the committee to discuss certain political resolution as involving misuse of municipal funds it was *held* that S. 54, Specific Relief Act confers jurisdiction on the Court to issue an injunction not in respect of every breach of an obligation, whether statutory or otherwise, but only in respect of a breach of an obligation existing in favour of the applicant. 1932 Sindh 287; 127 I. C. 690.

English Law.—This section corresponds to S. 140 of the Municipal Corporation Act, 1882. There are numerous English authorities dealing with the legal and illegal expenditure of municipal funds. *See* Arnold on "Municipal Corporation Act," 6th Edition, pp. 101 and 103.

"Locus standi" of tax-payers to restrain misapplication.—A suit to try the question whether the proposed expenditure was or was not illegal is maintainable at the instance of a tax-payer. 22 Bom. 616.

Sub-section 2 and justification for creating nuisances.—

(1) The committees are not justified under the sub-section to create nuisances to the infringement of private rights of other persons. Where the establishment of a slaughter-house was sought to be justified under this section it was *held* that a municipal committee in the Punjab is not entitled to justify by statutory authority every nuisance committed in the fair and reasonable exercise of the powers conferred under the Act. There is a material distinction between the case of statutory powers given by the legislature when the legislature directs that a thing shall at all events be done, and the case of similar powers when the exercise of the powers at all and the time and place of the exercise are discretionary. When a company or public body can construct its works without injury to private rights, it is in general bound to do so. Further, as a rule of construction of statutes those who seek to establish that the legislature intended to take away the rights of private individuals lie under the burden of showing that such intention appears by express words or necessary implication. P. R. 106 of 1888.

(2) In answer to a suit brought against the municipal committee of Delhi for an injunction to prevent, on the ground of nuisance, the use of a public latrine recently erected by the committee it was pleaded that the defendants were acting under statutory authority and that the alleged nuisance, if any, being a necessary consequence of the use of the powers and duties imposed on the committee by the legislature, could not be restrained by injunction:

Held that the power claimed by the committee under S. 68, sub-S. (2) (a) of the Punjab Municipal Act, 1884 [—S. 52, sub-S. (2) (a) of the present Act], did not exist: that, that enactment contained no express authorization to the defendants to construct public latrines. The section merely rendered it lawful for the committee to apply their funds towards payment, *inter alia*, of the charges and expenses incidental to the construction, maintenance, improvement, cleansing and repairs of latrines: it implied a discretionary power to construct public necessities but it conferred no compulsory power to acquire land for the purpose of erecting such buildings thereon in any specific locality or at any place which might be deemed suitable by the committee. P. R. 103 of 1899.

Note.—Under S. 125 (4) the construction of public latrines can be made an obligatory duty.

(3) The location of a refuse cart near a residential house is a nuisance. The provision of refuse cart is essential for cleansing public streets. It is therefore an obligatory

duty, necessarily deducible from the obligatory duty of cleaning streets laid down upon the Karachi Municipality by S. 54 (1) (c) of the Bombay District Municipal Act.

No action in tort will lie in respect of the exercise with judgment and caution of powers conferred by the legislature. 8 I. C. 208. *See*, however, 59 I. C. 823 below. No such obligatory duty unless so enjoined is cast on municipalities in the Punjab.

The creation of nuisance—onus for justification. In the case of public corporations in which category municipal corporations are included, no right to create a nuisance or to interfere with private rights is to be assumed, and it must be proved that they are entitled to exemption from an action to restrain them. The onus is on them. In *Metropolitan Asylum District v. Hill*, 6 App. Cas. 193 (1881), Lord Blackburn says: "It is clear that the burden lies on those who seek to establish that the legislature intended to take away the private rights of individuals to show that by express words or by necessary implication such an intention appears. The onus of proving that the creation of a nuisance will be the inevitable result of carrying out the direction of legislature, lies upon persons seeking to justify the nuisance" (per Lord Watson). Even in cases where the corporation is under imperative duty to do a certain act a nuisance is not justified unless it is clear that the act is impossible without creating the nuisance. The existence of provisions* for payment of compensation is an important factor to be weighed in deciding whether the duty is imperative and justifies creation of nuisance. It has frequently been held that the absence of a provision for compensation would make it most difficult to establish the proposition contended for. But it has never been held that the presence of such a provision *ipso facto* established the intention to take away private rights.

Where the municipal committee was under imperative obligation to remove and dispose of nightsoil, but where nuisance was not the necessary result of the exercise of the powers to remove and dispose of such nightsoil and the legislature did not contemplate a nuisance as the necessary result of exercising these powers then the committee will be restrained from creating or continuing the nuisance. 59 I. C. 823.

If the legislature authorizes a specific act to be done and if the performance of that act and of every other subsidiary act necessary for, and incidental to, the performance of the main act creates nuisance or causes damage, the local body authorized to perform the act cannot be restrained by

* Such as S. 224 of this Act.

injunction nor made liable for damages except on the ground of negligence. From this it follows that if the act can be performed without creating a nuisance and without causing injury or damage then the local body performing the act would be liable if the act is performed in such a manner as to create nuisance or cause damage. It is a matter of construction of the Act, whether the legislature intended (a) merely to confer permissive right on the local body or (b) to enjoin the performance of an obligatory duty. Where in the performance of an act an option is given to the local body, e.g., in the selection of a site or in the deciding of the necessity for the performance of the act at a particular time, then the choice of the local body of either place or time cannot be questioned unless the choice has not been *bona fide*.

On a construction of Ss. 25,* 26, and 113, Rangoon Municipal Act, 1922 a duty is imposed on the corporation to erect urinals and water closets for public convenience on municipal lands, that the choice of the place where it is to be erected and the time when such water closets and urinals at any particular place became necessary are left to the corporation since the erection of such structures is not merely a permissive act which it is open to the corporation to perform or not to perform, the principles applicable are those which apply to the carrying out of imperative duties imposed upon a local body. However, the legislature obviously intended that if the acts could be performed without creating a nuisance they should be so performed but if some nuisance is inevitable then the least practicable amount of nuisance must be created. In case of a proposed latrine by the Rangoon Municipality on a municipal site it would be a nuisance only if there was bad supervision and insufficient cleaning by the corporation and misuse by an ignorant public. The corporation could not be sued under S. 203 where it chose the site *bona fide* and after much consideration and mere amenities of property or depreciation of the value of property owing to loss of amenities could not support a claim for an injunction. 1928 Rang. 87.

Sub-section 2, clause (a).—The improvement of streets, etc., that are not public is equally justified under the Act.

It was contended that the municipal fund could not be utilized in the acquisition of a strip of land for the purpose of widening a street in order to facilitate the effective use of fire engines. The contention rested on the ground that as only public streets vest in the municipality, the latter had no power to apply its funds to improvement of streets:

*Cf. Ss. 52 & 125 (4) of Punjab Municipal Act.

Held that the acquisition of land for such a purpose was within the powers of the municipality as it was conducive to the promotion of public health, safety, and convenience and that the civil court had no jurisdiction to restrain the municipality from exercising such powers. 24 Bom. 600.

Construction of drains and sewers.--The power to construct sewers and drains is incident to the ordinary ownership of land; but where such construction and maintenance have become necessary or important for the welfare of the community, the legislature has stepped in to facilitate, regulate and, in many cases, to compel such construction and maintenance. All municipal corporations have to provide for carrying the water off streets and for draining houses and buildings within their local limits. A municipality has a discretion to determine whether it will construct a system of drains or sewers, unless the duty is expressly imposed by statute. Where the duty is so imposed, it is the duty of the municipality to cause to be made, in addition to the sewers which may have become vested in it, such sewers as may be necessary for effectually draining its local area. It need not, however, provide for the removal of trade effluents: *Peebles v. Oswaldtwistle Urban District Council*, (1897) 1 Q. B. 384; nor is it incumbent on a local authority to make sewers for the prospective development of a building estate, *R. v. Tynemouth Rural District Council*, (1896) 2 Q. B. 451 C. A., or for outlying houses which may be reasonably drained into cesspools, *Kinson Pottery Co. v. Poole Corporation*, (1899) 2 Q. B. 41. Where a local authority fails to provide a sewage system, any person aggrieved thereby has no remedy at law by action or otherwise. *Passmore v. Oswaldtwistle U. D. C.*, (1898) A. C. 387.

It may be stated as a general rule that a municipal corporation is not bound to construct sewers and that in the absence of a mandatory statute the corporation is not liable in damages for wholly failing to provide sewerage or drainage. But there may be conditions under which it may become the duty of the municipality to provide drainage with respect to particular parcels of land. Thus it is generally the duty of the municipality to abate nuisances, and if drainage is necessary to that end the municipality has authority to provide it. Similarly its duty to keep its streets in safe condition requires them to be drained. (*See* 9 R. C. L. P. 661) but where there is an absolute obligation imposed on the local authority, the court will enforce it by a *mandamus*; and the method in which the duty is to be carried out is in the discretion of the local authority. *R. v. London*, C. C. 82 L. T. 306.

It is not bound to construct in all parts of the city at the same time. But it should be remembered that authority to construct and maintain a system of sewers and drains gives no right to the municipal corporation to create a nuisance. It is the duty of the municipal corporation not to create a nuisance, and when a sewer is constructed, it must be kept in a proper state of repair so as not to cause a nuisance.

It is the duty of the municipality to construct its sewers so as to be capable of resisting all the violence of the weather which may be expected, though perhaps, rarely to occur. If, therefore, damage is caused by an overflow of its sewer, it is liable for the same if it fails to establish that it was unable by reasonable means to prevent the overflow. *City of Montreal v. Watt and Scott* [Ld.] [1922] 2 A. C. 555-9 L. S. G. G. R. See also *Greenock Corporation v. Caledonian Ry. Co. and Glasgow S. W. Ry. Co.*, [1917] W. N. 262.

Municipal corporations are invested with certain powers for executing works connected with the system of drainage either within or without the local area. It is for the municipal corporation to determine how the work is to be constructed; and so long as it exercises an honest discretion, without misconduct or negligence, it is not liable to have its judgment overruled in a court of law. *Derby (Earl) v. Bury Improvement Commissioners*, (1869) L. R. 4 Ex. 222.

A municipal corporation may, when necessary or manifestly desirable, acquire land and make contracts to construct works beyond its corporate limits for the discharge of sewerage and drainage, for drainage, whether of surface water or of impurities can seldom be effectual unless connected with running water which will remove it beyond the inhabited limits and in many instances running water or at least a suitable stream is not available within the city limits. 9 R. C. L. 622.

Unless specially empowered, a municipal corporation being a public body with a defined jurisdiction would not have any authority to do anything outside the local area. If, for instance, it is required to acquire property outside the municipal local area to dispose of sewage, it should be strictly authorised by statute.

During the construction or repair of sewers, the local authority must take proper precautions against accidents and cause the sewer or drain during the construction or repair thereof by it to be lighted and guarded during the night so as to prevent accidents. It may also close any

street during execution by it of sewerage works and keep the same closed for such time as shall be necessary. Aiyangar on "Municipal Corporations in India," pp. 447-448.

Maintenance and repair of public streets.—All public streets within a city being vested in the municipal corporation concerned, the statute provides that all the public streets so vested in it shall be maintained and repaired at the cost of the municipal fund and empowers the corporation concerned to meet from the same fund the cost of all improvements which are necessary or expedient for the public safety or convenience. The duty to repair a street entails an obligation to keep it in such repair as to be reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year. It is the duty of the local authority to maintain the street in a state of repair sufficient for the traffic which may reasonably be expected from time to time to pass along it: *Sharpness New Docks v. Worcester Corporation* (1929), 1 K. B. 422. The road being "very muddy" is not being "out of repair." The fact that a street is occasionally rendered impassable by floods does not entail an obligation to raise its level. The mode of repair is in the discretion of the local authority; and a court will not direct what repairs are to be done or what materials are to be used. Its function is only to consider results, and not to prescribe methods: *A. G. v. Staffordshire County Council* (1905) 1 Ch. 336. Nor will the Court interfere, if the proposed repairs are *intra vires* and the authority has *bona fide* decided that in the interest of passengers, it is desirable to carry them out. The duty to repair does not include lighting: *Richardson v. Tubbs* 1847 4. C. B. 304. Where the duty is general, *i. e.*, to repair and maintain the court will not interfere by issuing a *mandamus* nor will it command the execution of particular repairs. But where there is a statutory obligation to do works specially prescribed, the court will always interfere. ("Halsbury's Laws," Vol. 16, p. 159). The duty to maintain and repair being thus imposed on the municipalities, it follows that they would be liable for a breach of their statutory duty (*Corporation of the Town of Calcutta v. Anderson*, [1884] 10 Cal. 449). Where, however, obstruction is caused by the negligence of other persons using the street they are also liable for the same. *Ellis v. Banyard*, (1912) 28 T. L. R. 122. See *R. v. Sheffield Canal Co.* (1849) 13 Q. B. 913. Under the English Law generally no action for damages will lie against a highway authority at the suit of a person who has suffered injury through its neglect to repair a highway under its charge, and in order to establish liability, it is

necessary to show some act amounting to misfeasance as opposed to mere non-feasance. *Irving v. Carlisle* R. D. C. 1907, 71 J. P. 212.

As observed by Banks, L. J., in *Kimber v. Gas Light and Coke Co.* (1918) 82 J. P. 125, if a person creates a dangerous condition of things in the nature of a trap, whether in a public highway, or on his own premises, or those of any other, and he sees some person who to his knowledge is unaware of the existence of the danger lawfully about to expose himself, to the danger which he has created, he is under a duty to give such person a warning.

As observed by A. L. Smith, L. J., in *Thompson v. Mayor etc., of Brighton*, (1894) 1 Q. B. 338, "It is now beyond doubt the law that where a person, though lawfully using a highway, is damaged, either as regards himself, his horses or his carriage, merely by reason of the non-repair of a highway, he has no action at law for damages against any one.----- In the year 1870, it had been held by the Court of Queen's Bench in *Gibson v. Mayor of Preston*. L. R. 7 Q. B. 218, that a local authority who were constituted surveyors of highways by the Public Health Act, 1848, had the same immunity from actions for damages as a surveyor of highways; and the House of Lords in *Cowley v. Newmarket Local Board*, (1892) B. C. 345 affirmed Gibson's case, and conclusively settled that no action for damages will lie against any local board for merely allowing their highways to get out of repairs."

Where the pavement of a road has been properly laid with wood blocks in the first instance and afterwards in consequence of heavy rain there has been a bulging of the blocks by which an accident is caused, the only breach of duty which can be charged against the highway authority is an ordinary case of non-repair and a non-feasance, for which they cannot be held liable in damages for an accident caused by it. In view of the general use of wood pavement all over the country without complaint it cannot be said that wood blocks are improper material to use for road construction. (*Moul v. Croydon Corporation*, [1918] W. N. 194 = [1918] 82 J. P. 283).

It has been accordingly held that a local authority is always liable, in the absence of contributory negligence, to a passenger for injuries caused by its misfeasance, as for instance, when it has pulled down and failed to replace a fence protecting passengers from a dangerous ditch.

A corporation is always liable where a passenger sustained personal injuries from spiked guards erected for the protection of trees planted in a highway. (*Morrison v. Sheffield Corporation*, [1917] 2 K. B. 866 C. A.; 4 L. S. G. R. 33); where it has erected a fountain on the street and not repaired it so as to prevent stones falling therefrom; where a hole was left in the street by defective execution of works; where a gravel pit in the pavement of a street was left open and unguarded, (*Jones v. Westminster City Council*, [1915] 79 J. P. 112) where a hydrant was left unguarded (*Mc Kibban v. Glasgow Corporation*, [1920] 57 S. L. R. 476); where it has erected a post in the middle of footpath to prevent cattle straying on it and has allowed an adjacent street lamp to be unlighted: (*Lumley v. East Retford Corporation*, [1891], 55 J. P. 133, C. A.) where its servants or other persons, *e.g.*, a contractor, for whose acts it is responsible, have left heaps of stones or materials upon a highway without guarding or lighting them; (*Foreman v. Canterbury Corporation*, [1871] L. R. 6 Q. B. 214; *Nelson v. Lanarkshire County Council*, [1891] 19 R. [Ct. of Sess.] 311; or have broken up a street for repairs and have not guarded or lighted it during the work (*Pendlebury v. Greenhalgh*, [1875] 1 Q. B. D. 36, C. A.) or have not properly restored the street afterwards (*Hill v. Tottenham U. D. C.*, [1899] 79 L. T. 495, or have caused an accident by negligence in executing the work (*Hardaker v. Idle District Council* [1896] 1 Q. B. 335); where a great depth of broken stone is laid over the whole width of the road at once and is not rolled in as soon as a short length has been so stoned (*Torrance v. Ilford U. D. C.* [1909] 73 J. P. 225); where a hole is filled in with soft material; (*Meeling v. St. Mary Nowington Vestry* [1893] 10 T. L. R. 54); where a fence adjoining the street is damaged by raising the level of the road; (*Rockford v. Essex County Council*, [1915] 85 L. J. Ch. 281); where it negligently fails to maintain in a proper state some appliance properly placed by it or its predecessors in the street, or to remedy some defective appliance placed there by its predecessors, as, for instance, for accidents caused by defective sewer gratings; (*White v. Hindley Local Board* [1875] L. R. 10 Q. B. 219) or by defective sewers caving in and forming a hole; (*Bathurst Borough v. Macpherson* [1879] 4 App. Cas. 256), or by placing an iron flap in a street to cover a water meter and allowing it to become dangerously slippery; (*Blackmore v. Mile End Old Town Vestry*, [1882] 9 Q. B. D. 451 C. A.); where a door opened outwards upon a street, and struck a foot passenger on his face while using the street, this may not be by itself evidence of negligence against the owners or against the corporation.

(See *Evans v. Edinburgh Corporation*, [1916] 2 A. C. 45.) The municipality will be liable in damages only when injury is sustained by a person while using the highway. In *Bromley v. Mercer* (1922 2 K. B. 126) the defendants were the owners of a house and a yard abutting on a highway, and separated therefrom by a wall which was in such a defective state of repair so as to constitute a public nuisance in the highway. The plaintiff, a child of nine years of age, who was visiting the tenant of the premises, while playing in the yard was injured by a heavy stone which fell from the wall upon her. In an action against the owners for damages for the injuries so sustained, it was *held* that as the plaintiff was not using the highway when the accident occurred and was not entitled to recover damages from the defendants. If a ditch being out of repair is a portion of the highway, the doctrine of non-feasance applies, but if it is something introduced adjoining the highway in such a position as to cause damage to the highway unless it is kept in order and forms no portion of the highway, the doctrine of misfeasance as distinguished from non-feasance will be applicable. *Andrews v. Merton and Modren, U. D. C.* (1921) 56 L. J. 406. Aiyangar's "Municipal Corporations," pp. 511–515. These principles were held applicable to India. *Sec 41 Mad.* 538.

Under the English law, generally no action for damages will lie against a highway authority at the suit of a person who has suffered injury through its neglect to repair a highway under its charge; and in order to establish liability, it is necessary to show some act amounting to misfeasance as opposed to mere non-feasance.

Discussion of political subjects.—The main object for which powers of local self-government are transferred to municipal corporation under this Act is that the city fathers should look after the health of the city and the comfort and well-being of its residents. But it is not correct to say that for the well-being of such public subjects it may not, in certain instances, be necessary or in any case be not proper for them to discuss political subjects or that the discussion of such subjects is *ultra vires*. 1930 Sindh 287; 127 I. C. 690.

Damage by trees where planting of trees obligatory.—No action for damages will lie against a public body for mere non-feasance in the absence of proof of negligence or carelessness in the discharge of their duties. 42 Mad. 331; 50 I. C. 809; 36 Mad. L. J. 372.

If, however, the acts done by a public body are only permissive, the private rights of parties must be respected and such body is liable in damages for injuries caused to private individuals. In an action against London County Council the complaint was that by the neglect of the council to lop off branches of trees, plaintiff suffered injury. In that case there was no duty cast upon the council to plant and preserve the trees. Still Lord Russell of Killowen, C. J., held that because the failure to lop off the branches was only non-feasance no action lay against County Council. *Tregellas v. London County Council*, (1898) T. L. R. 55.

In an action for an injunction against a taluk board directing it to lop off the branches of certain trees which spread over the plaintiff's land:

Held, that the action could not be maintained (1) as the taluk board was under an obligatory duty to plant and preserve trees on the sides of public roads, (2) as no carelessness or negligence in the discharge of its duties was proved and (3) the omission to remove the branches only amounted to a non-feasance for which no action lay at the instance of a private individual. 50 I. C. 809, 42 Mad. 331.

Where a tree stands on the land of both the plaintiff and the defendant and is owned by the defendant who enjoys the fruits thereof, the plaintiff is not entitled to remove the roots, stem and branches of the tree owing to the tree putting its roots through his land and owing to its branches overhanging his land. 57 I. C. 544, 44 Bom. 605.

Clause (1).—The previous clauses enumerate all the several objects on which the municipal fund is applicable. This is a general clause empowering committees to spend the fund on acts and things which are likely to promote the safety, health, welfare, or convenience of the inhabitants. For expenditure not falling specifically under any of the above clauses, resort is generally had to this clause, and unless the object is likely to promote health, safety, etc., the expenditure will not be justified. I do not think the expenditure incurred in providing telephones to members by some of the municipal committees in the Punjab is a valid application of the municipal fund. In no way can it be claimed that the provision of telephones to members is likely to promote the safety, health, welfare, or convenience of the inhabitants. The expenditure is not covered by any specific clause of the section and unless the committee declare such expenditure as appropriate charge with the consent of the local Government the practice though not now followed should be regarded

as not authorized. Under the latter portion of the clause the Government has in several instances declared expenditure on certain objects as appropriate charge on municipal fund. This is quite illegal. The power rests with the committee to make such declarations with the consent of the local Government.

Payment of
salary to
president
out of funds.

53. With the sanction of the local Government a salary of such amount as the local Government may fix may be paid to the president of a committee, not being a salaried officer of Government, out of the municipal fund.

Notes.

S. 73 of the old Act.

Analogous Law.—S. 28 of Bengal Act, III of 1884; S. 16 of Madras Act, IV of 1884.

Custody of
municipal
fund.

54. (1) In places where there is a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over, the municipal fund shall be kept in such treasury, sub-treasury or bank.

(2) In places where there is no such treasury, sub-treasury or bank, the municipal fund may *with the previous sanction of the Commissioner* be deposited with any banker or person acting as a banker who has given such security for the safe custody and repayment on demand of the fund so deposited as the Commissioner may in each case think sufficient.

Notes.

Recent changes.—The sub-S. 2 was substituted by S. 26 of the Punjab Amendment Act, III of 1933, the effect is the addition of the words in italics.

S. 74 of the old Act.

Analogous Law:—

S. 83, Bengal District Municipal Act, 1884.
S. 106, Bengal Municipal Act, XV of 1932.
S. 65, Behar and Orissa Municipal Act, 1922.
S. 53, Bombay District Municipal Act, III of 1901.
S. 112, Bombay City Municipal Act, III of 1888.

S. 75, Burma Municipal Act, III of 1898.
S. 107, Cantonment Act, II of 1924.
S. 62, Central Provinces Municipal Act, II of 1922.
S. 16, Madras District Municipal Act, V of 1920.
S. 115, United Provinces Municipalities Act, 1916.
S. 36, Punjab District Board Act, 1883.

55. (1) A committee may, with the previous sanction of the Commissioner, invest any portion of its municipal fund in securities of the Government of India, or invest it in such other securities or place it in such other manner as the local Government may approve in this behalf and vary such investment or placement for others of like nature.

Investment
of same.

(2) The income resulting from such securities or placement and proceeds of the sale of the same shall be credited to the municipal fund.

Notes.

S. 75 of the old Act.

The section was amended by Act II of 1923. The powers of committees in matters of investments have been extended. They will now have the power to place their money or deposit in approved banks with the previous sanction of Government.

Analogous Law:—

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|--|---|
| S. 83, Bengal District Municipal Act, 1894. | S. 76, Burma Municipal Act, III of 1898. |
| S. 67, Bombay Municipal Boroughs Act, 1925. | Ss. 82 & 92, Calcutta City Municipal Act III of 1923. |
| S. 53, Bombay District Municipal Act, III of 1901. | Ss. 66 & 67, Rangoon City Municipal Act, 1922. |
| Ss. 114 & 122, Bombay City Municipal Act, III of 1888. | S. 115 (3), U. P. Municipalities Act, 1916. |
| | S. 36 (2), Punjab District Board Act, 1883. |

Recent changes.—Recently by S. 27 of the Punjab Amendment Act III of 1933 the words “from time to time” have been omitted as unnecessary. A power given can be exercised as often as necessary. Similarly the words “with the previous sanction of the Commission” in the latter portion of the section have been omitted as unnecessary.

56. (1) Subject to any special reservation made or to any special conditions imposed by the local Government, all property of the nature hereinafter in this section specified and situated within the municipality, shall vest in and be under the control of the committee, and with all other property which has already vested or may hereafter vest in the committee, shall be held and applied by it for the purposes of this Act, that is to say:—

Property
vested in
committee

- (a) all public town-walls, gates, markets, slaughter-houses, manure and night soil depots and public buildings of every description which have been constructed or are maintained out of municipal fund;
- (b) all public streams, springs and works for the supply, storage and distribution of water for public purposes, and all bridges, buildings, engines, materials and

things connected therewith or appertaining thereto and also any adjacent land (not being private property) appertaining to any public tank or well;

- (c) all public sewers and drains, and all sewers, drains, culverts and water courses in or under any public street, *or constructed by or for the committee alongside any public street*, and all works, materials and things appertaining thereto;
- (d) all dust, dirt, dung, ashes, refuse, animal matter or filth or rubbish of any kind, or dead bodies of animals, collected by the committee from the streets, houses, privies, sewers, cesspools or elsewhere or deposited in places fixed by the committee under Section 154;
- (e) all public lamps, lamp-posts and apparatus connected therewith or appertaining thereto;
- (f) all land or other property transferred to the committee by the Government or acquired by gift, purchase or otherwise for local public purposes;
- (g) all public streets not being land owned by Government, and the pavements, stones and other materials thereof, and also trees *growing on and* erections, materials, implements and things provided for, on such streets.

(2) Where any immovable property is transferred otherwise than by sale by the local Government to a municipal committee for public purposes, it shall be deemed to be a condition of such transfer, unless specially provided to the contrary, that should the property be at any time resumed by the Government the compensation payable therefor shall, notwithstanding any thing to the contrary in the Land Acquisition Act, 1894, in no case exceed the amount, if any, paid to the Government for the transfer, together with the cost or the present value, whichever shall be less, of any buildings erected or other works executed on the land by the municipal committee.

(3) The committee shall maintain a register and a map of all immovable property of which it is the proprietor, or vests in it, or which it holds in trust for the local Government.

Notes.

S. 76 of the old Act with slight changes in sub-Cl. (g). Cl. 2 was newly introduced by Act, III of 1911.

Recent changes.—S. 28 of Amendment Act, III of 1933, has made the following changes:—

The words in italics in sub-Cl. (c) have been inserted and the word “alongside” after the words “watercourses in” has been omitted.

Sub-clause (g). The words “open spaces” have been omitted and for the word “lands” the word “land” has been substituted. The words in italics have been inserted.

Cl. 3 has been newly added. This introduces an important provision making it obligatory on committees to maintain a register and a map of all immovable property owned by it or which vests in it or which it holds in trust.

Such a register and plan will be admissible in evidence under S. 35 of the Evidence Act.

Analogous Law:—

Ss 30, 32, 196 & 306, Bengal District Municipal Act, 1884.
Ss 95, & 256 Bengal Municipal Act, XV of 1932.
Ss. 58 & 59, Behar and Orissa Municipal Act, 1922.
S 63, Bombay Municipal Boroughs Act, 1925.
Ss. 50 (2) & 54, Bombay District Municipal Act, III of 1901.
Ss. 89, 9 A-D, 220 (c), 242, 269 (1), 289 (g) & 366 (d), Bombay City Municipal Act, III of 1888,
Ss. 81, Burma Municipal Act, III of 1898.
Ss. 84, 214, 248-9 & 95, Calcutta City Municipal Act, III of 1923

Ss. 108, Cantonment Act, II of 1924.
S. 38, Central Provinces Municipal Act, II of 1922.
Ss. 153, 56 (b), 175 (c), 199 (d), 203 (g), Madras City Municipal Act, 1919.
Ss. 61 (g), 62 (r), 225 (b), Madras District Municipal Act, V of 1920.
Ss. 38 & 110, Rangoon City Municipal Act, 1922.
S. 116, U. P. Municipalities Act, 1916

English Law:—

S. 149, Public Health Act, 1875.
Ss. 13, 64, 144 & 149, Municipal Corporation Act, 1882.

Municipal Committees are trustees.—All property acquired or held by committees is held in trust for public purposes or for purposes of the Act. All properties of the description described in the section including water-works and lighting plants constructed and owned by a municipality for the use of the inhabitants belong to the same class of property as public streets and public town halls, etc.; and they are held by the municipality for similar purposes and upon similar trusts. Similarly all properties under the section are charged with a public trust of which the inhabitants are the beneficiaries. See Dillon, p. 2128.

Vest.—In connection with streets and highways this word has attracted a great deal of judicial notice. In England there are numerous Acts corresponding to several municipal Acts in force in different parts of India. By Public Health Act, 1875, it is enacted that all streets shall vest in and be under the control of the urban authorities. Similar enactments are contained in the Metropolis Local Management Act, 1855, and in the Local Government Act, 1888. Pratt in his work on "Highways," 18th Edition, pp. 60-61, says:—"The effect of these enactments is to transfer to the urban or other authority the property in the surface of the street and in the zone or area of ordinary user of the street *qua* street, both above and below the surface; and to this extent the property and possession are divested from the former owner. The urban authority have vested in them "only the surface; and with the surface such right below the surface as is essential to the maintenance, occupation, exclusive possession of the street and the making and maintaining the street for the use of the public. It seems to me that the vesting of the streets vests in the authority such property, and such property only, as is necessary for the control, protection and maintenance of the street as a highway for public use. It is intelligible enough that Parliament should have vested the street *qua* street, and, indeed, so much of the actual soil of the street as might be necessary for the purpose of preserving and maintaining and using it as a street." With regard to the air above the 'street', the board of works have not any proprietary interest above the 'street', except what is necessary to protect the street and the traffic from interruption or danger, or to enable them to exercise their powers in the 'street'. That which is vested in the local authority is what is called the area of user. All the stratum of air above the surface, and soil below the surface which in any reasonable sense can be required for the purposes of the street as street, vest in and belong to the local authority.

What is vested in them is the property in the street, not a mere easement, although the soil or land is not vested in them as the owners.

The county council or other authority have, therefore, such a property in the surface as enables them to demise the right of pasturage thereon, or to grant a license to a gas company to open the surface for the purpose of laying down their pipes, or to prevent a tramway company laying electric feeders under the footways of the streets without statutory authority. In the Metropolis, the borough councils have vested in them the subsoil of the street in

which they may construct underground lavatories. But outside the Metropolis local authorities have not vested in them the subsoil of the street to such a depth as to enable them to construct lavatories under the street, unless they have the power to do so given by S. 47 of the Public Health Act, 1907, nor have they any power to grant a license to lay pipes used for trading purposes by traders. They do not acquire any right to minerals below the street, nor can they, as statutory owners of the soil, complain of the erection of a telephone wire or an electric lighting wire across the street at a great height, and causing no appreciable danger to the public or obstruction to the traffic in the street, nor after a wire is laid in the street can they obtain a mandatory injunction to remove the wire, nor without statutory authority can they break open any street outside the district for the purpose of laying or repairing water pipes." Pratt on "Highways," 18th Edition, pp. 60—62.

The above interpretation has been followed in India. The leading case on the subject is reported in 25 Mad. 635 where the subject is fully discussed and where after referring to all the English and Indian authorities it was laid down that "vesting of streets does not transfer to the municipal authority the rights of the owner in the site or soil over which the street exists. It does not own the soil from the centre of the earth *usque ad coelum* but it has the exclusive right to manage and control the surface of the soil and so much of the soil below and of the space above the surface as is necessary to enable it to adequately maintain the street as a street, and it has also a certain property in the soil of the street which will enable it as owner to bring a possessory action against trespassers."

In 17 I. C. 158, it was remarked: The streets and drains therein in municipal towns are vested in the municipalities by Government for purposes for which they are constituted. Their right is not a mere right of easement but a special kind of property in the site previously unknown to the law, but created by statute. See also 12 Bom. 490.

With regard to this view of the law Sadasiva Aiyar, J., remarked in 23 Mad. L. J. 479 as follows:—"With the greatest deference, I might be permitted to express some regret that the complications known to English Law were thus introduced into this Presidency throughout the judgment of Bashyam Iyengar, J. The result has been, as pointed out by that very learned judge himself, that there sprang up a sort of divided ownership between municipal council and the Secretary of State, that there has been introduced

different periods of limitation as against the municipal council and as against the Secretary of State_____However, it is probably now too late to go back on these distinctions which were based upon the view of the English and Scotch Law that the site of public highways is presumed to be in the conterminous proprietors and that they merely allow the public to impose a servitude upon the highway—a view which need have no place in a country where porambakes, streets, streams, water, etc., almost invariably belong to Government till a private person is able to acquire a title by grant or prescription.” 23 Mad. L. J. 479; 17 I. C. 158.

See also Lumley’s “Public Health,” pp. 292—295.

Vesting and belonging.—The words “vesting and belonging to” as applied to public ways which are vested in the municipalities clearly relates only to the streets, ways and passages or whatever else they may be which belong to the public.

In the case of a public way it is the surface and not the soil which constitutes the street. it is the surface along which the public has the right to pass and it is the surface for purpose of lawful passage which defines the public right and therefore when the words “belonging to” are used in the section the legislature did not intend to vest in the municipality anything more than what was necessary to constitute the street and did not thereby deprive the owner of the land, who made the original dedication, of the soil which he necessarily reserved to himself when he was content to dedicate the surface to the use of the public.

The existence of a prior dedication with regard to a ancient public way takes very much the nature of what is called a lost grant. It is entirely different in its legal attributes and its origin from a private way or easement which may be acquired by prescription following upon continuous user. The public cannot acquire a public way by prescription and where a public way is found and no traces are forthcoming of its origin the law presumes a dedication or a lost grant by the owner to whom the land belonged and who alone could dedicate it.

In the case of public ways and highways the courts in India could apply English principles. 1924 All. 599; 46 All. 470, 22 A. L. J. 729.

Section 56 (f).—Gifts with conditions.—There is nothing in the Act itself which can remotely suggest that the municipality is incompetent to enter into a binding engagement by

which gifts under conditions cannot be accepted. Cf. 1924 Cal. 101, 73 I. C. 776.

Vesting of sewers and drains.—Similarly according to English authorities the word “vest” will have the same meaning so far as drains and sewers are concerned. The effect of the vesting clause is thus described by Jessel, M. R., in *Taylor and Corp. of Oldham*, 4 Ch. D. 395, at p. 411, “It was found under the old law, and it was sometimes held, that the sewer authorities—had only an easement, and it was found to be very inconvenient, and consequently in the modern Acts, the property in the sewers has been vested in the sewer authorities. That is to say, that instead of allowing the subsoil to remain in the owner of the soil subject to an easement or right of sewerage or drainage, the absolute property in the sewer (which means not merely the brick barrel or whatever it may be, forming the sewer, but the whole interior of the sewer, that is, the whole of the space occupied by it) is now vested in the sewer authorities. And if the sewer is a large one, it amounts, in substance for all useful purposes, to the whole of the subsoil; and that is absolutely vested in the corporation.” This is explained in a later case, *Att.-Gen. v. Guardians of Dorking Union*, 20 Ch. D. 595, at p. 694 by the Master of the Rolls: “The vesting of the sewers in the local authority gives them a very limited right of ownership. I am not prepared to say that they are in the same position as a landowner through whose land a sewer, an artificial work, runs. It by no means follows that they have the same right as he has. He can stop it up without asking anybody, but as I read this Act of Parliament, I am by no means prepared to say that this local sanitary board can stop the sewer up and thereby cause a most frightful nuisance to the inhabitants of the district whose drainage it is their business to protect and perfect. The vesting is not an absolute right of ownership but a modified and limited right of ownership, and it does not in my opinion give them a right to stop up the sewer.”

The law relating to the vesting of sewers is thus summarised by MacMorran and Willis in their *Treatise* at page 95:—

(1) The local authority have more than a mere easement in the sewer and the subsoil in which it lies;

(2) They have a limited ownership in the sewer and subsoil;

(3) Their ownership is commensurate with the rights and duties imposed upon them in respect of the sewer, so that

they have power to affect and disturb the surface and subsoil above and around the sewer as and when they require to deal with it; and this to all intents and purposes makes them almost proprietors of so much of the soil they may from time to time require to disturb; and

(4) All interest in the sewers and subsoil for the purpose of the sewers ceases as soon as the sewer ceases to exist as a means of drainage.

Ownership of *solum* of streets vesting in committees.—

The *solum* of roads and streets belongs to the person or persons who expressly dedicate or are presumed to have dedicated the land forming the road or street. Lord Mansfield thus states the law as to highways: "The King has nothing but the passage for himself and his people; but the freehold and all profits belong to the owner of the soil." There is a general presumption, however, that the owner of the land adjoining a street is owner also of the soil of one-half of the street, i. e., *usque ad medium filum viæ*. Where a piece of land which adjoins a highway is conveyed by general words, the presumption of law is that the soil of the highway *usque ad medium filum* passes by the conveyance, even though reference is made to a plan annexed, the measurement and colouring of which would exclude it. The presumption applies whether the road is a public or a private one. The presumption is equally applicable to streets in a town as to highways in the country, and is not rebutted by the fact that the vendor is the owner of the soil beyond the *medium filum viæ*; in such a case, the presumption is that the conveyance passes the soil of the highway so far as it is vested in the vendor. This presumption however, may be rebutted by evidence. In a suit between the lords of the manor and the Corporation of Leeds, it was held that the soil of Briggate, an ancient street in the borough of Leeds, belonged to the lords of the manor, there being sufficient evidence to rebut the presumption of ownership in the owners of the adjoining houses. *Beckett v. Corporation of Leeds*, L. R. 7 Ch. 421: Aiyangar's "Law of Municipal Corporation," p. 449.

Note.—Under the Amended Punjab Municipal Act, after twenty-five years soil of the public street becomes the absolute property of the municipal committee, *vide* S. 169 (g) proviso.

Presumption of ownership.—A highway or waste-land adjoining it must be presumed to belong to the owners of the adjacent property and when it is abandoned as a road it reverts to such owners jointly. The vesting of streets or roads in municipal bodies was not intended to deprive persons of any private right of property they might have in land used as a

highway or street and does not vest the subsoil in such bodies. 7 All. 362; 13 Cal. 171; 20 Cal. 732; 25 Mad. 635; 23 Mad. L. J. 479; 46 All. 470.

With regard to a street or road lying between two properties, in the absence of any proof as to who dedicated the site of such street or road, the presumption is that owner of each property is also the owner of one-half of the site and that each owner dedicated one-half of the site for the benefit of the public. 4 Cal. 206.

Public.—The word public in several clauses of the section though used in the beginning of the clause governs all the several things mentioned as vesting in the committee. Cf. 2 I. C. 408.

Sewers and drains. These terms are not defined anywhere in the Act. The ordinary meaning of sewer is an underground passage for draining off water and filth. The word "drain" as used in the Public Health Act evidently means a passage for sewage from a single house only which may afterwards fall into a cesspool or larger sewer. The word "sewer" comes from the word to "sew," i.e., to drain and has a much more extended signification, embracing works on the largest scale, such as draining the fens of Lincolnshire by means of canals, etc. In the common sense of the term it means a large and generally, though not always, underground passage for fluid and feculent matter from a house or houses to some other locality. But it does not comprise a cesspool for the purpose of retaining the sewage whether as a simple deposit or to be converted into manure or other useful purposes" *per* Kidersley, V. C., in *Sutton v. Norwich Corporation*, (1858) 27 L. J. Ch. 739.

Drains.—Drains on both sides of a public street into which the rain water falling on the street flows vest in the municipality even though they are on private property. 55 I. C. 493; 30 I. C. 683.

Adverse possession over drains.—Unless the enjoyment by the municipality of a drain as a drain is prevented openly as of right there can be no adverse possession against the municipality. 55 I. C. 493 (*fol.* 30 I. C. 683; 4 I. C. 828 *doubted*).

S. 56 (c).—Public drains alongside the street.—A house drain alongside a public street made by owner of the adjoining premises to which the land covered by the drain belongs, for the outlet of water therefore is not excluded from operation of S. 56. Cf. 44 Cal. 689, 37 I. C. 96.

The legal effect of the statutory vesting of a street or a drain in a municipality is not to transfer to the municipality the ownership in the site or soil over which the street or the drain exists; but only the surface and so much of the air-space above and so much of the soil below the surface vest in and belong to the municipality as may reasonably be required for its control, protection and maintenance as a highway or drain for the use of the public; only to this extent, the owner of the land covered by the street or drain is divested of his property.

In construing an Act like the Calcutta Municipal Act, courts will not presume that the intention of the legislature was to confiscate private property and vest it in a public corporation without compensation granted to the proprietor, but the reasonable inference should be that the right of the owner was intended to be abridged only to the extent necessary for the discharge of the statutory duties imposed on the corporation for the benefit of the public.

When a highway vests under a statute in a local authority, the property of the local authority concerned does not extend further than is necessary for the maintenance and user of the highway as a highway and subject to this qualification the original owner's rights and property remain and if the highway ceases to be a highway, the owner becomes entitled to full and unabridged rights of ownership in the property.

The plaintiffs' land, covered by a drain that had vested in the Calcutta Corporation under S. 286 of the Calcutta Municipal Act, having been included within the boundaries of the municipal land, they brought a suit for a perpetual injunction against the corporation and for a declaration of their title to the land:

Held, that the plaintiffs were entitled not only to a declaration of title but also to a perpetual injunction restraining the corporation and its officials and servants, from interfering with the exercise by the plaintiffs of their right of ownership in the disputed land, except in so far as such interference might reasonably be required for the control, protection and maintenance of the drain thereon for the use of the public. 44 Cal. 689, 37 I. C. 96, 21 C. W. N. 234.

Public drains.—The words "public drains" are not confined to those drains provided and maintained by municipal council. They have to be understood in their ordinary sense; and they include a water course which has been long

in existence for draining away storm water. Hence where a person encroaches upon the limit of such water course, without the permission of the municipal council, the chairman is within his rights in removing the obstruction. 1933 Mad. 428, 143 I. C. 90.

Vesting of other things.—It is presumed that the construction of the word *vest* with regard to streets will hold good with regard to other properties as well, though it is doubtful whether this restricted meaning will apply to all properties under the section.

Purposes of the Act.—What are the purposes of the Act are enumerated in S. 52. See 12 I. C. 871 noted under S. 52 at p. 255.

Clause (b)—“Any adjacent land appertaining to any tank” etc.—These words apparently do not vest a public tank or a well in the committee and at first sight it would appear strange that the legislature should have vested the adjacent lands but not the tank or well itself. Tanks or wells are, however, works for the supply, storage etc., of water for public purposes and as such vest in the committee and therefore it was only necessary to vest adjacent lands of these works. Comparison of analogous law of other provinces will show that the above interpretation is correct. (Cf. S. 306, Bengal Act IV of 1884.) In 67 I. C. 899 a well sunk as a charitable act by a person and dedicated by him to the public was regarded as a public place and was held to vest in the committee under S. 56 (1) (b).

Public using a well does not make it public.—In India ordinarily the owners of wells do not prohibit the public from using them. It is considered to be a meritorious act to allow the public to take water even from a private well; therefore the mere fact that the public was allowed to take water from the well and it continued to take water for nearly 30 years cannot necessarily lead to the conclusion that the well was dedicated to the public. 1924 Lah. 511; 75 I. C. 896.

S. 56 (d)—Misappropriation of sweepings.—The Sanitary Inspector, well knowing the proper place for deposit, and taking advantage of the fact commonly known that there was a war between the sweepers and the municipality and that sweepers were taking their stuff elsewhere, used his authority with the sweepers to deposit the stuff at an unauthorised place and proceeded to sell it: *Held*, a servant acting within the scope of his employment cannot in order to defraud his master, set up breach of his

master's regulations in his own favour; and it must be taken that in any case, when this nightsoil was deposited at an unauthorised place, the Sanitary Inspector still held it there at the disposition of his employers, and to appropriate it to his own use would be a breach of trust. 1923 All. 480; 45 All. 281, 76 I. C. 971.

Clause (f)—Gifts and grants to and for the benefit of a municipality.—Gift to municipalities for public purposes are very common to Europe and America. In this country these are very rare. Municipal and public corporations may be the objects of public and private bounty. This is reasonable and just. They are in law clothed with the power of individuality. They are placed by law under various obligations and duties. Burdens of a peculiar character rest upon compact populations residing within restricted and narrow limits, to meet which property and revenues are absolutely necessary and, therefore, legacies of personal property, devises of real property, and grants or gifts of either species of property directly to the corporation for its own use and benefit, intended to and which have the effect to ease it of its obligations or lighten the burden of its citizens, are, in the absence of disabling or restraining statutes, valid in law. Thus, a conveyance of land to a town or other public corporation, for benevolent or public purposes, as for a site for a school-house, city or town-house, and the like, is based upon a sufficient consideration, and such conveyances are liberally construed in support of the objects contemplated. Dillon, pp. 1567-8.

Acquisition by adverse possession.—The municipal committee is not precluded from acquiring title by adverse possession under the Act. 1923 Lah. 534; 77 I. C. 509.

Adverse possession.—The act of sweeping the land occasionally by the municipality cannot be said to be adverse possession as against the real owner. 1926 Madras 235; 22 M. L. W. 671; 92 I. C. 18.

Street.—The land on either side of a road up to the defined boundary belongs to the municipality as such land is covered by the definition of a street.

To claim sixty years' rule of easement there must be Government ownership on the date when the easement is claimed and not at some antecedent period. 116 I. C. 806; 1929 All. 382.

A bye-law passed by the board and sanctioned by the Government signifying the intention to let out the spaces at

the sides of roads to hawkers does not create board's ownership in those sites but merely extends its power of user, the ownership being already created by S. 56 of the Municipal Act. Cf. 1929 All. 382; 116 I. C. 806.

Vacant lands in municipal areas.—There is a general impression in the minds of the people that all vacant lands in municipal areas not owned by particular individuals belong to the municipality. There is no authority for the proposition that all lands within the limits of a municipality in the absence of a proof to the contrary belong to the municipal committee 47 I. C. 892.

Section 56 and Section 91, Civil Procedure Code.—S. 56 does not impose any limitation on S. 91, Civil Procedure Code, so as to exclude from its scope cases in which a local authority such as a municipal committee and district board might be regarded as competent to safeguard the interests of the public against acts of public nuisance created by the obstruction of a public highway. Hence an obstruction in a highway can be removed at the suit of any two or more persons authorized under S. 91 of Civil Procedure Code. The municipal Act nowhere lays down that the committee alone has the power of removing obstruction. 40 I. C. 74; 21 C. W. N. 595.

Trees.—Trees not planted or provided by the committee cannot vest in them in the sense of enabling the committee to sell them or make profit out of them. Municipality has, however, power to remove any trees as the custodian of the interests of sanitation. S. 56 (g) of the Act does not apply to trees not provided by a municipality itself. A municipality has power to remove and plant trees because it has full control over the sanitation and general management of the municipal area but it has no power to sell or make profit out of trees which do not belong to it. 38 I. C. 93.

See also Notes under S. 52.

57. (1) The management, control and administration of every public institution maintained out of the municipal fund shall vest in the committee.

Management
of public
institution.

(2) When any public institution has been placed under direction, management and control of the committee, all property, endowments and fund belonging thereto shall be held by the committee in trust for the purposes to which such property, endowments and funds were lawfully applicable at the time when the institution was so placed:

Provided that the extent of the independent authority of the committee in respect of any such institution may be prescribed by the local Government;

Provided also that nothing in this section shall be held to prevent the vesting of any trust property in the Treasurer of Charitable Endowments under the Charitable Endowments Act, 1890.

Notes.

S. 77 of the old Act. Second proviso is new.

Analogous Law:—

- | | |
|--|--|
| S. 97, Bengal Municipal Act, XV of 1932. | S. 39, Central Provinces Municipal Act, II of 1922. |
| S. 60, Behar and Orissa Municipal Act, 1922. | S. 73, Madras City Municipal Act, 1919 |
| S. 57, Bombay District Municipal Act, III of 1901. | Ss. 63 & 66, Madras District Municipal Act, V of 1920. |
| Ss. 90 & 91, Bombay City Municipal Act, III of 1888. | S. 39, Rangoon City Municipal Act, 1922. |
| S. 79, Burma Municipal Act, III of 1898. | S. 119, U. P. Municipalities Act, 1916 |
| S. 116-A, Cantonment Act, II of 1924. | S. 61, District Board Act, 1883. |

Powers of municipalities with regard to public institutions placed under their control. See 31 Mad. 111.

Municipal committees will have the right to institute suits with regard to such institutions. 27 I. C. 1001.

Where the management of the schools belonging to a society was taken over by the municipality there is no presumption that this taking over did assign the rights and liabilities of the original society to the Committee. 1925 Mad. 943; 86 I. C. 509.

Acquisition
of land.

58. When any land, whether within or without the limits of a municipality, is required for the purposes of this Act, the local Government may at the request of the committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894; and on payment by the committee of the compensation awarded under that Act, and of any other charges incurred in acquiring the land, the land shall vest in the committee.

***Explanation.*—When any land is required for a new street or for the improvement of an existing street, the committee may proceed to acquire, in addition to the land to be occupied by the street, the land necessary for the sites of the buildings**

to be erected on both sides of the street and such land shall be deemed to be required for the purposes of this Act.

Notes.

S. 40 of the old Act. The Explanation is S. 85 of the old Act.

Analogous Law:—

S. 35, Bengal District Municipal Act, 1884.	Ss. 310 & 468, Calcutta City Municipal Act, III of 1923
S. 98, Bengal Municipal Act, XV of 1932.	S. 110, Cantonment Act, II of 1924.
S. 63, Behar and Orissa Municipal Act, 1922.	S. 40, Central Provinces Municipal Act, II of 1922.
S. 52, Bombay Municipal Boroughs Act, 1925.	S. 76, Madras City Municipal Act, 1919.
S. 41, Bombay District Municipal Act, III of 1901.	S. 67, Madras District Municipal Act, V of 1920.
S. 91, Bombay City Municipal Act, III of 1888.	S. 41, Rangoon City Municipal Act, 1922
Ss. 41 & 43, Burma Municipal Act, III of 1898.	S. 117, United Provinces Municipalities Act, 1916.

The purposes of this Act.—The purposes are enumerated in S. 52 of the Act and *see* notes on p. 255.

Jurisdiction of civil court.—A civil court has no jurisdiction to entertain a suit for an injunction to restrain a municipality from acquiring, through the medium of Government under the Land Acquisition Act, 1894, a piece of land for purposes of widening a street. 24 Bom. 600.

Where a municipal committee acquired land for opening a street for scavenging purposes and a rate payer brought a suit for injunction restraining the committee from spending the funds on this object as the lane could be made much cheaper: *Held* such a suit did not lie. Under S. 18 the municipal committee is a corporation with power to contract and to do all things necessary for its constitution, the municipal fund being held by it under S. 52 for the purposes of the Act.

A municipal committee is a corporation for the purposes only for which it has been established by legislature and has no existence for any other purposes, and that whatever is done beyond the scope of such purposes is *ultra vires* and void.

If the committee keeps within its authorization and acts *bona fide*, the courts will not interfere with its operations. It will be deemed the best judge, not only of what is most

conducive to its own interest, but also of what is proper and fitting as regards third parties and it will be left unchecked to take or not to take lands for promoting sanitation. Corporation, however, is protected only if it acts *bona fide*: 35 Mad, L. J. 251=4 L. S. G. G. R. 84.

Acquisition of more land than is necessary for the purpose of recoupment is authorised by the Explanation. 43 All. 644; 63 I. C. 410.

Jurisdiction of civil court to question the notification—

Whenever the local Government sanctions an improvement scheme there is a duty to announce the fact by notification and the publication of a notification is conclusive evidence that the scheme has been duly framed and sanctioned. This provision does not affect the right of the claimant to institute a suit to have it declared that the board in framing the scheme acted *ultra vires*.

Building of quarters for municipal servants should be held to be a measure likely to promote public convenience. The matter lies within the discretion of the municipal commissioner and a court of law cannot interfere with the exercise of that discretion. Where the municipality had in contemplation the utilization of the ground-floor of the premises to be built upon the area in suit as shops: *Held* that there was no sufficient ground for holding that the municipality could not proceed with the scheme. 1925 Bom. 538; 90 I. C. 695; 27 Bom. L. R. 1130.

A municipality wanted to acquire some land for the purposes of constructing a *dharamsala* and widening a road. The owner challenged the right of the corporation to acquire the land for *dharamsala* as such construction is excluded from the term 'public purpose' because persons mainly interested would have been the worshippers and dignitaries of the temple. It was *held* that where the municipality wanted to acquire land for *dharamsala* near Kali's temple as well as for widening the road, that what the municipality had to consider was not the religious beliefs and purposes of those assembling in large numbers but what was the situation of the city in respect to this assemblage and to the citizens at large in view of the general questions of public convenience, proper sanitation and the prevention of danger and disease. Any enlightened municipality would carefully attend to these questions and endeavour to avoid the evils referred to. This is not to be ruled out by a consideration as to the particular form of belief or practice of those who would primarily benefit by the improvements made.

It may be true that the acquisition of this block of land for a *dharamshala* would not fall under (ii) as being for a building under the control of the corporation, or even under the general denomination of hospitals or alms-houses in (v); but upon these nothing need be said, for their Lordships are clearly of opinion that the construction and maintenance of a *dharamshala* cannot be said to be ruled out of (xi), which covers "any other matter which is likely to promote the public health, safety or convenience, or the carrying out of this Act." This being so, their Lordships would be the last to question the opinion of, or the exercise of discretion by, the Municipality of Calcutta, even if they differed from it, which they certainly do not. The Act by S. 14 and S. 556 has expressly placed the discretion not with this board or with a court of law, but with the municipality itself.*

The corporation has the power of acquisition of land which may in their opinion be needed for carrying out any of the purposes of the Act. 1922 P. C. 333-69 I. C. 114.

Acquisition by agreement. - There is no section of the Act under which the municipality has power to acquire any portion of a person's land by agreement with him. They certainly have no power whatever to call upon him to surrender to them a strip of land. If they require to obtain possession of any portion of the land, they will have to show that it was required for a public purpose before they can spend municipal funds on the acquisition. 1926 Bom. 347.

Plaintiff applied for permission to build upon his house site. The municipality resolved that the plaintiff should set back by three feet his proposed building, and for the set-back compensation should be paid to him but no amount was fixed. In a suit by plaintiff against the municipality to recover from them the value of the land and of the superstructure upon it:

Held, that there were merely negotiations between the parties which never crystallized into an agreement so as to be enforceable by the Court. 1926 Bom. 347, 95 I. C. 262.

Transfer in favour of Committee not required.—S. 91, Bombay District Municipal Act (= S. 58 of Punjab Act) *pro tanto* modifies the provisions in the Land Acquisition Act so as to vest the property in the Corporation on payment of compensation awarded, instead of in the Government and therefore no transfer from Government to the Corporation is needed and the property vests absolutely in the municipality as it does in the Government by virtue of S. 16 of the Land Acquisition Act. 45 Bom. 725; 1921 Bom. 213, 60 I. C. 571.

*References are throughout to Calcutta City Municipal Act of 1899.

Under S. 21 of the Madras District Municipalities Act a municipal council is a corporation with power to contract and to do all things necessary for the purposes of its constitution, the municipal fund being held by it under S. 27 for the purposes of the Act. If the council keeps within its authorization and acts *bona fide*, the court will not interfere with its operations. It will be deemed the best judge, not only of what is most conducive to its own interest, but also of what is proper and fitting, as regards third parties, and it will be left unchecked to take or not to take lands for promoting sanitation, etc. The corporation is, however, protected only if it acts *bona fide*. Where therefore a petitioner sued to restrain the expenditure on acquisition of scavenging lane on the ground that there was a cheaper way and more convenient way of making the lane, the suit was dismissed as incompetent and injunction was refused. 48 I. C. 128; 35 Mad. L. J. 251.

transfer to
of pro-
vesting
committee.

59. The committee may, with the sanction of the local Government, transfer to His Majesty any property vesting in the committee under Section 56 or Section 57, but not so as to effect any trusts or public rights subject to which the property is held.

Notes.

S. 78 of the old Act.

Analogous Law.—S. 124 of United Provinces Act, II of 1916; S. 80 of Burma Act III of 1898; S. 41 of Central Provinces Municipal Act, 1922.

of Act
879.

60. Nothing in this Act shall affect the Local Authorities Loans Act, 1879.

Notes.

Analogous Law.—S. 207 of Burma Act, III of 1898; S. 40 of Central Provinces Act, II of 1922; S. 106 of the Municipal Corporation Act, 1882; S. 63 of District Board Act, 1883.

Borrowing powers.—Local Authorities Loans Act, 1879, has since been repealed by Act IX of 1914. In the amendments since 1911 opportunity should have been taken to change the reference to the existing loans Act. This Act enables the local authorities such as municipal committees and district boards to borrow money on the security of their funds under certain conditions. One of the chief distinguishing feature of municipal corporations is that they have no borrowing powers unless conferred by legislature

while other private companies have inherent powers of borrowing money without any express permission of the legislature.

Power to create debts payable in future is absolutely necessary in order to enable municipalities to make expensive and permanent local improvements, such as the provision for a good water-supply, the construction of sewers and drains, the erection of necessary public buildings, etc.

It is only proper that the burden of this expenditure should be distributed upon the existing and future generations of ratepayers, and consequently various municipal corporations are invested with powers to raise loans. The proneness of municipalities to incur indebtedness, especially if its burden can be thrown upon posterity, is well known. These powers are seriously abused. Public officials, prudent though they are in the management of their own private finances, often expend public moneys lavishly or extravagantly, and the liabilities ultimately fall upon the ratepayers; and in the interests of the public welfare, the legislature has thought fit to regulate and restrict the same. Municipal Corporations of the cities of Bombay, Calcutta and Madras are empowered to raise loans in the open market, whereas the district municipalities are not so empowered; but they can only obtain a loan from Government under the provisions of the Local Authorities Loans Act 1914. Aiyangar's "Law of Municipal Corporations," p. 256.

See Arnold's "Law of Municipal Corporations," pp. 83 & 232. A local authority cannot overdraw its account with its bankers. In other words, it cannot raise money by a banker's overdraft. *Smith v. Southampton Corporation* (1902) 2 K.B. 244.

A municipal corporation has no implied power to borrow money. The power to incur indebtedness must be expressly given to a municipal corporation before a valid debt or obligation can be contracted or incurred. This strict rule is adopted universally by courts as the only available means for curbing and restraining the dishonesty or extravagance of public officials. Where a specific grant of power does not exist to borrow money, a debenture or a bond given by a corporation for authorising the loan cannot be enforced even though the money borrowed has been expended for municipal purposes. The power to raise money does not necessarily mean to raise money by borrowing, but it generally means to raise money by taxation; and this power to borrow money is not a continuing power, but will be exhausted as soon as the amount is raised for the purpose concerned. If the

borrowing powers do not enable it to borrow without giving security, it must borrow only after giving security; and a payment of interest made on behalf of the local authority upon money borrowed without security is illegal.

The provisions relating to the grant of power to borrow are always strictly construed; and the Act which confers this power upon the corporation is the "measure of its power," as has been stated repeatedly by the Supreme Court of the United States. The practical effect of the working of this rule is to deny to municipal corporations the authority to incur indebtedness, if any question of doubt should arise. A person contemplating a borrowing transaction must satisfy himself by looking at the constitution of the corporation whether it has powers to borrow or not, but he need not go further or enquire whether any private regulations or conditions have been complied with.

This power to incur debts which is granted to municipal corporations distinguishes it from other corporations. In the case of a private corporation, the funds for its promotion and the transaction of its corporate business are derived through contributions from the members. If by mismanagement, the dishonesty or extravagance of its agents, or the creation of ill-advised or imprudent obligations, a loss is sustained, the loss falls upon the members personally. On the other hand, the expenditure of the municipal corporations are paid by moneys raised by the imposition and collection of taxes, and in case a loss is sustained through mismanagement or otherwise the loss falls ultimately upon the ratepayers. This difference in the manner of raising revenues is an important distinction to be borne in mind between a municipal corporation and other corporations. It is this difference in the manner of raising revenues which leads the courts to adopt the strict rule of construction in allowing and recognizing the right to incur indebtedness by municipal corporations. (Abbott's "Corporations," Vol. I, pp. 283-4). Aiyangar's "Law of Corporations in British India."

Where a statute lays down particular formalities that should be observed before the loan could be raised, and the manner in which the loan could be raised, all those formalities must be strictly observed; and the municipalities being artificial persons, they can only act through their agents, and parties dealing with the municipality must at their peril ascertain whether the proposed loan complies with all the formalities prescribed by statute and whether the proposed indebtedness exceeds the constitutional limitation irrespective of any considerations of hardship or ignorance. (Dillon, Vol. I, p. 345.)

To protect the persons and property in a municipality from the abuse of the corporate officers and the consequent ruinous taxation, a limit upto which loans could be raised may be and is in fact generally placed. In such a case, a person who lends in excess of the amount authorized does so at his own risk. The statutes place an absolute limit for incurring indebtedness which shall not be extended. Where a limit is so fixed, a restriction against borrowing more is implied and the borrowing of a sum beyond that limit is *ultra vires*. The Corporation of Bombay cannot borrow beyond double the rateable value of the premises in the city assessable to property taxes, while in the case of the Corporations of Calcutta and Madras, it cannot exceed 10 and 12½ per cent respectively on the annual value of buildings and lands in the city. In Rangoon, it cannot exceed 18 per cent. In fixing this limit, two factors are to be considered: (1) the amount of the assessed value of the property within the municipality and (2) the ratio between that value and the debt already contracted or proposed to be contracted. The assessment immediately preceding the incurring of the debt is usually taken. Where a municipality has reached its constitutional limit and it is found necessary, for instance, to construct a system of water-works, there is nothing to prevent the municipality from granting a franchise to a water company for the construction by it of such a system. Aiyangar's "Law of Corporations in British India," pp. 257, 261. Dillon Vol. I pp. 440—45.

CHAPTER V.

TAXATION.

*61. Subject to any general or special orders which the local Government may make in this behalf, and to the rules, any committee may, from time to time for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely:—

Taxes which
may be im-
posed.

(1) (a) a tax payable by the owner, on buildings and lands—

(i) not exceeding twelve and a half per centum on the annual value;

(ii) not exceeding in the municipalities of Simla, Dharamsala, Dalhousie and Murree, one anna and four pies, and elsewhere one anna, per square yard of the ground area; or

*Substituted by S. 16 of Punjab Act, II of 1923,

- (iii) not exceeding in the municipalities of Simla, Dharamsala, Dalhousie and Murree, four rupees and elsewhere three rupees, per running foot of frontage in streets or bazars:

Provided that in the whole or any part of the municipality of Simla there may be imposed both a tax on buildings and a tax on lands:

Provided further that in the case of lands and buildings occupied by tenants in perpetuity, the tax shall be payable by such tenants.

(b) a tax on persons practising any profession or art or carrying on any trade or calling in the municipality;

*Explanation.**—A Government official or person holding an office under the local Government or the Government of India or a local or other public authority shall be deemed to be practising a profession within the meaning of this sub-clause.

(c) a tax, payable by the owner, on all or any vehicles, animals used for riding, driving, draught or burden, and dogs, when such vehicles, animals used as aforesaid, and dogs are kept within the municipality;

(d) a tax, payable by the employer, on menial domestic servants;

(e) a tax, payable by the occupier of any building in respect of which the committee has, in exercise of the powers conferred by Ss. 159 to 165 of this Act, undertaken the house scavenging;

(f) a tax, payable by persons presenting building applications to the committee:

Provided that a committee shall not impose any tax without the previous sanction of the local Government when —

- (i) it consists of members less than three-fourths of whom have been elected, or
- (ii) its cash balances have, at any time within the three months preceding the date of the passing of the resolution imposing the tax, fallen below Rs. 20,000 or one-tenth of the income accrued

*Explanation has been added by S. 3 of Punjab Municipal Amendment Act, 1925 and the words in italics have been inserted by S. 29 (1) of the Punjab Amendment Act, 1933.

in the previous financial year, whichever amount shall be less.

(2) Save as provided in the foregoing clause, with the previous sanction of the local Government any other tax which under rules made under clause (a) of sub-section (3) of Section 80-A of the Government of India Act, a local authority may be authorized to impose by any bye-law made by the local legislature without the previous sanction of the Governor-General.

(3) With the previous sanction of the local Government and of the Governor-General in council any tax.

Notes.

The whole of the section was redrafted and the present section was substituted for the old by the Amendment Act of 1923. According to the Select Committee's report the change is necessitated by the Devolution Rules and it also delegates with due safeguards to committees certain powers of taxation without the necessity of previous sanction by Government.

Recent changes.—(1) The explanation to Cl. (b) of sub-section of S. 61 was added by S. 3 of the Amending Act 1925 while the words in italics have been inserted by S. 29 of the Punjab Amending Act III of 1933.

(2) Toll under clause (d) has been omitted.

(3) Tax payable by persons putting in building applications to the committee has been introduced.

This will probably be a fixed charge; will the tax be refundable if the application is refused?

Analogous Law:—

Ss. 85 & 86, Bengal District Municipal Act, 1884.	Ss. 116, 124, 165 (c), 179 & 184. Calcutta City Municipal Act, III of 1923.
Ss. 123, 124 & 132, Bengal Municipal Act, XV of 1932.	S. 60, Cantonment Act, II of 1924.
Ss. 82, 84 (1), 137 & 151, Behar & Orissa Municipal Act, 1922.	S. 66, Central Provinces Municipal Act, II of 1922.
S. 73, Bombay Municipal Boroughs Act, 1925.	S. 98, Madras City Municipal Act, 1919
S. 59, Bombay District Municipal Act, III of 1901.	Ss. 78, 93, 98, 105, 108 & 110, Madras District Municipal Act, V of 1920.
Ss. 139, 140, 146, & 180, Bombay City Municipal Act, III of 1888.	Ss. 79, 80, 81 & 84, Rangoon City Municipal Act, 1921.
Ss. 46-49, Burma Municipal Act, III of 1898.	S. 128, 130 (f), United Provinces Municipalities Act, 1916.
	S. 30, Punjab District Board Act, 1883.

Changes in the section since 1911. — Under the former section the committee could only impose certain taxes enumerated in Cl. (B) with the previous sanction of the local Government and if the tax to be imposed was outside the list of taxes enumerated, the committee could impose it with the previous sanction of both the Governor-General-in-Council and of the local Government. This power is preserved under certain altered conditions but certain extended powers to impose certain taxes without any previous sanction has also been given under the present amended section. So far as taxes mentioned in sub-clause I are concerned the committees, if they fulfil certain requirements, can impose any or all of these taxes without obtaining any previous sanction. In order to be able to impose these taxes the elected members of the committee should not be less than three-fourths and its cash balances should not have fallen below the limit fixed. Rules made under Cl. (a) of sub-S. 3 of S. 80-A of the Government of India Act give a list of taxes which the local authorities can be empowered to impose with or without the previous sanction of the local Government.

Taxes falling outside the list will require as before the previous sanction of both the local Government and the Governor-General of India. The rules made under S. 80-A (3) (a) are quoted below. *See P. G., Part II, dated 16th December 1920, as amended by Government of India Notification No. 7 of 24th January 1924.*

Rules under Section 80-A (3) (a) of the Government of India Act.—In exercise of the powers conferred by S. 80-A (3) (a) and S. 129-A of the Government of India Act, the Governor-General in Council, with the sanction of the Secretary of State in Council, is pleased to make the following rules:—

1, These rules may be called the Scheduled Taxes Rules.

2. The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, for the purpose of the local Government, any tax included in Schedule I to these rules.

3. The Legislative Council of a province may, without the previous sanction of the Governor-General, make and take into consideration any law imposing, or authorising any local authority to impose, for the purpose

of such local authority, any tax included in Schedule II to these rules.

4. The Governor-General-in-Council may at any time, by order, make any addition to the taxes enumerated in Schedules I and II to these rules.

5. Nothing in these rules shall affect the right of a local authority to impose a tax without previous sanction or with the previous sanction of the local Government when such right is conferred upon it by any law for the time being in force.

SCHEDULE I.

1. A tax on land put to uses other than agricultural.
2. A tax on succession or on acquisition by survivorship in a joint family.
3. A tax on any form of betting or gambling permitted by law.
4. A tax on advertisements.
5. A tax on amusements.
6. A tax on any specified luxury.
7. A registration fee.
8. A stamp duty other than duties of which the amount is fixed by Indian legislation.

SCHEDULE II.

(In this schedule the word "tax" includes a cess, rates, duty or fee.)

1. A toll.
2. A tax on land or land values.
3. A tax on buildings.
4. A tax on vehicles or boats.
5. A tax on animals.
6. A tax on menials and domestic servants.
7. An octroi.
8. A terminal tax on goods imported into or exported from a local area save where such tax is first imposed in a local area in which an octroi was not levied on or before the 6th July 1917.
9. A tax on trades, professions and callings.
10. A tax on private markets.
11. A tax imposed in return for services rendered such as—

- (a) a water rate,
- (b) a lighting rate,
- (c) a scavenging, sanitary or sewage rate,
- (d) a drainage tax,
- (e) fees for the use of markets and other public conveniences.

The present S. 61 is based on these rules. Schedule II gives a list of taxes which legislature of a province may authorise local authorities to impose. According to rule 5, S. 61 has been so framed that the committees have been allowed to impose certain taxes out of the schedule II (under certain safeguards) without obtaining previous sanction of the local Government, while in case of the remaining taxes of the Schedule II the committees have to obtain previous sanction of the local Government.

The taxes which require thus the previous sanction of local Government are an octroi, a terminal tax, a tax on private markets and all taxes imposed in return for services rendered except a scavenging tax.

Construction of Fiscal Enactments.—A municipal corporation levies taxes by virtue of authority delegated to it by the State ; and it therefore follows that municipal corporations can levy no taxes, general or special, upon the inhabitants or property unless the power be plainly and unmistakably conferred. The authority granted to municipal corporations to impose taxes upon persons or property being wholly statutory, it must be clearly given and strictly pursued. The burden is upon the corporation to show the power to levy taxes by express words or necessary implication. Statutes authorising the levying of taxes are strictly construed ; and if there is any doubt, that doubt exempts the citizen from the burden. The power to tax a business or occupation must also be expressly conferred. In order to impose a tax, due, rate, or toll upon a subject or upon property within the limits of a municipal corporation, the framers of the Act under which such tax, due, rate, or toll is imposed or levied must use clear and unambiguous words to effect their purpose. When the words used are ambiguous, the intention of the courts will be in favour of the subject upon whom the tax is sought to be imposed: 8 Bom. H. C. R. A. C. J. 213 where copper in octroi schedule was not held to include copper pots. As observed by Lord Cairns in *Partington v. The Attorney-General* (L. R. 4 H. L. 100) “if the person sought to be taxed comes within the letter of the law, he must be taxed, however great

the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible in any statute what is called an equitable construction, certainly, such a construction is not admissible in a taxing statute where you can simply adhere to the words of the statute." The subject is not to be taxed unless the language of the statute clearly imposes the obligation, and in case of reasonable doubt, the construction most beneficial to the subject is to be adopted: 31 Mad. 408. Although in construing fiscal enactments, the court ordinarily insists upon the subject taxed being clearly within the words of the law and declines to extend its scope when there is an ambiguity, yet when the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy and to execute the true intention of the legislature: 11 Mad. 253. A statute is not to be construed like a contract. The power to impose a tax is not contractual and needs no correlative right. When a public body is entrusted by the legislature with a duty of making public improvements and powers are entrusted to it for such purposes, those powers will not be subject to a restrictive construction, though they interfere with private rights. 2 Mad. 362.

In construing enactments creating fiscal obligations, provisions declaring the liability to the tax are to be distinguished from those providing for its imposition. The machinery for the imposition of the tax may be independent of the obligation of the tax-payer. 3 Mad. 129.

The principle of construction to be applied to taxing statutes is that, if the words of the statute are capable of two otherwise equally opposite constructions, the construction to be adopted is that in favour of the tax-payer; but to ascertain whether the two possible constructions are equally opposite, the ordinary rules of construction of statute are to be applied. The maxim that clear words are necessary in order to tax the subject does not mean, as often contended, that the words are to be unduly restricted against taxing authority. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly

at the language used. A taxing Act is not to be construed differently from any other Act. The court must no doubt ascertain the subject-matter to which the particular tax is intended to be applied. When once that is ascertained, it is not open to the court to narrow or whittle down the operation of the Act by seeming consideration of hardship or business convenience or the like. Courts have to give effect to what the legislature has said. 47 Mad. 262, 79 I. C. 928; 1924 Mad. 420.

The well-known principle of interpretation of fiscal enactment is that if the language is at all ambiguous it must be interpreted in the manner most beneficial to the subject. Taxing statutes must state with utmost clearness what and whom and in what manner they are taxing. 51 Mad. 301; 1928 Mad. 569.

In construing Act of legislature the presumption should be that words are used in their ordinary and popular meaning.

In construing fiscal enactments an interpretation most beneficial to the subject ought to be adopted in case of reasonable doubt. For the purposes of taxation "income" means net income and not gross income. 1931 Nag. 45.

See also 1930 Mad. 200 noted below on p. 310.

It is a well-established rule that fiscal enactments imposing burdens on subjects ought to be strictly construed, and an assessee is entitled to object to a taxation unless his case is reasonably . . . clearly brought within the wording of the taxing section. 1932 Mad. 474, 138 I. C. 12.

Enactments which render the public liable to pay taxes or charges must be construed strictly, or in other words unless the language under which they are sought to be charged is perfectly clear the charging authorities are not entitled to assess a charge inasmuch as the public have a right to know what exactly are the charges imposed upon them. *See* also 1931 All. 23 and 401; 36 I. C. 877.

The language of the statute imposing a tax must receive a strict construction. If the person sought to be taxed comes within the letter of the law, he must be taxed. On the other hand if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free however much within the spirit of the law a case might otherwise appear to

be. There can be no equitable construction admissible in a taxing statute. 1931 Lah. 572, 132 I. C. 694. See 1931 Nag. 156, noted under S. 78.

Fiscal enactment is to be construed in favour of the subject. 1928 Lah. 219, 108 I. C. 524.

Right of Government to claim exemption from payment of taxes.—In England, owing to historical causes, the legislature has proceeded on the view that the Crown is not bound by a statute unless named in it and it is therefore that the Crown is in many statutes expressly stated to be bound; but it is impossible to say broadly that in India the Crown is not bound by statutes, unless expressly named in it. Such express inclusion is altogether exceptional here. It would be more correct to say that, as a general rule, the Indian legislature have proceeded on the assumption that the Government will be bound by the taxing provisions of a statute unless expressly or by necessary implication excluded from its operation.

According to the uniform course of Indian legislation, statute imposing duties or taxes bind Government as much as its subjects unless the very nature of the duty of tax is such as to be inapplicable to Government and whenever it is the intention of legislature to exempt Government from any duty, the Government is specially exempted. 25 Mad 457.

By Act XI of 1881 Government has, however, obtained special powers. The chief provisions of the Act are quoted below:—

Act XI of
1881

2. In this Act "municipal committee" includes a municipal corporation or a body of municipal commissioners constituted by or under the provisions of any enactment for the time being in force.

3. Notwithstanding anything contained in any enactment for the time being in force, the Governor-General in Council may, by an order in writing, prohibit the levy by a municipal committee of any specified tax—

(a) payable by any person subject to the Army Discipline and Regulation Act, 1879, or the Indian Articles of War, who is compelled by the exigencies of military duty to reside within the limits of a municipality; or

(b) payable by the Secretary of State for India in Council.

The Governor-General in Council may, by a like order, rescind any such prohibition.

4. So long as any order made under S. 3, prohibiting the levy of a tax on any person mentioned in Cl. (a) of that section, remains in force, the Secretary of State for India in Council shall be liable to pay to the municipal committee mentioned in the order the amount which otherwise would have been payable to such committee by such persons :

Provided that the said Secretary of State in Council shall not be liable to pay any sum in respect of any horse which such person is bound by the regulations of the service to which he belongs, to keep.

5. So long as any order made under S. 3, prohibiting the levy of any tax payable by the Secretary of State for India in Council, remains in force, the said Secretary of State in Council shall be liable to pay to the municipal committee, in lieu of such tax, such sums (if any) as an officer from time to time appointed in this behalf by the local Government may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

6. If any question arises whether any duty is military duty within the meaning of this Act, the decision of the Governor-General in Council thereon shall be conclusive.

If any question arises whether any person is compelled as aforesaid to reside within the limits of a municipality, or is bound as aforesaid to keep any horse, the decision thereon of such authority as the Governor-General-in-Council may, from time to time, appoint in this behalf shall be conclusive.

Exemption of certain persons from taxation.—The following orders have been published by the Government of India on the subject of exemption:—

The levy by any municipal board upon any person subject to the Army Act, or to the Indian Army Act, 1911, who is compelled by the exigencies of military duty to reside within a limit of a municipality, of taxes of the following kinds, is prohibited:—

(1) Municipal taxes on salaries.

(2) Municipal taxes on professions, trades, callings, offices, or appointments.

(3) Municipal taxes on animals or vehicles in respect of:—

(a) any animal which such person is required by the regulations of the service to which he belongs to keep; and,

- (b) any vehicle which such person is permitted to keep in lieu of an animal which in the absence of such permission the said regulations would require to keep.—(*G. I. N. No. 821, dated 18th October 1923*).

The Government of India have also prohibited the levy by any municipal board of any tax payable in respect of a bicycle or tri-cycle by a warrant or non-commissioned officer or soldier who is compelled by the exigencies of military duty to reside within the limits of a municipality.—(*G. G. O. [H. D.] No. 77, dated 2nd May 1907*).

Liability of Government property to taxation.—The Governor-General-in-Council does not propose to issue any general order under Cl. (b) of S. 3 of the Act, regarding the exemption of Government property from municipal taxation; but His Excellency in Council will be prepared to take action under that clause, if any case of inordinate assessment of Government property is brought to notice for which redress cannot be obtained under the ordinary municipal law.

The following order has been published by the Government of India on the subject of the taxation of Government property:—

Attention is invited to paragraph 2 of Home Department Circular letter No. 5-165/173 of the 18th November, 1881 regarding the exemption of Government property from municipal taxation. As it appears possible that the wording of the paragraph in question may convey a misapprehension of the intentions of the Government of India regarding the application of the provisions of Cl. (b) S. 3 of Act XI of 1881, the Governor-General-in-Council considers it desirable to explain that the clause was framed mainly with a view to enable the Government to deal with cases of assessment of Government property when the property to be assessed is, from its nature, such as not to admit of the application of ordinary principles in assessing the payment thereon of the particular tax, as *e.g.*, when the assessment is on the letting value, and the property is of such a nature that it is difficult to conceive its being let and impossible to form any estimate of the rent that would be obtained for it if the Government offered to let it. It was the intention of the Act of 1881 to enable the Government to deal with such cases, failing an amicable (though possibly arbitrary) settlement with the local authority concerned, by at once issuing an order of prohibition under S. 3 clause (b), and appointing an officer under S. 5 without entering upon any formal argument or attempting to contest the matter by way of appeal or otherwise. In cases, however, in which there are no such peculiar circumstances attaching to the Government property assessed, as *e.g.*, where it consists of ordinary dwelling houses, the assessment should either be accepted, or if it appears unduly high proceedings should be taken to obtain redress under the ordinary municipal law and recourse should not be had to the special provisions of Act of 1881. *G. I. H. D. No. 215, dated 7th June 1885.*

Taxation of Railways.—S. 135 of Act IX of 1890 (Indian Railways Act) runs as follows:—

Notwithstanding anything to the contrary in any enactment, or in any agreement or award based on any enactment, the following rules shall regulate the levy of taxes in respect of railways and from railway administrations in aid of the funds of local authorities, namely:—

(1) A railway administration shall not be liable to pay any tax in aid of the fund of any local authority, unless the Governor-General-in-Council has by notification in the official Gazette declared the railway administration to be liable to pay the tax.

(2) While a notification of the Governor-General-in-Council under Cl. (1) of the section is in force, the railway administration shall be liable to pay to the local authority either the tax mentioned in the notification, or, in lieu thereof, such sum, if any, as an officer appointed in this behalf by the Governor-General-in-Council may, having regard to all the circumstances of the case, from time to time determine to be fair and reasonable.

(3) The Governor-General-in-Council may at any time revoke or vary a notification under Cl. (1) of this section.

(4) Nothing in this section is to be construed as debarring any railway administration from entering into a contract with any local authority for the supply of water or light, or for the scavenging of railway premises, or for any other service which the local authority may be rendering, or be prepared to render within any part of the local area under its control.

The following are the notifications issued by the Government of India in accordance with the above section:—

No. 1630 R. T., dated Calcutta, the 23rd December 1907.

Memo.—By the Secretary, Railway Board.

The undermentioned paper is forwarded to the local Governments and Administrations and to the officers noted on the margin* for information, with the remark that should any Railway Administration consider any particular tax or assessment unreasonable or disproportionate to the services rendered, the procedure indicated in paragraph 10 of the Government of India, Public Works Department letter No. 20-R. T., dated the 7th January 1901, copy forwarded under Memorandum No. 21-R. T., of same date, and paragraph 20 of Public Works Department Resolution No 434-R. T., dated the 17th August 1894, should be followed.

The necessary portion of paragraph 10 of letter No. 20-R. T. of 7th January, referred to above, is as follows:—

“(i) the taxes, if any, imposed by municipal authorities upon Railway Administrations or communities should be in proportion to and for services rendered, and

“(ii) where no services are rendered, it should not be competent for municipal authorities to enforce taxation.”

[* Margin is omitted—*Author.*]

"As regards (i), if a Railway Administration considers any tax disproportionate to the services rendered, the procedure laid down in paragraph 2 of the Public Works Department Resolution No. 434-R. T., dated the 17th August 1894, should be followed."

Paragraph 2 of the Resolution referred to above runs as follows:—

"Should any railway administration, however, consider that any particular tax, or its assessment, is unreasonable or disproportionate to the services rendered, the Governor-General-in-Council is pleased to decide that an application for the revision of such tax or assessment should be made direct to the Commissioner in charge of the division, in which the tax is levied, or where there is not such a Commissioner, to the officer holding a position corresponding to that of a Commissioner (*e.g.*, the Collector in the Presidency of Madras, or the Deputy Commissioner in Sylhet or Cachar), who is hereby appointed under S. 135, sub-S. (2) of the Indian Railways Act, 1890, to enquire specially into all the circumstances of the case and determine, in communication with the contending parties the sum, if any, which should be paid." *No. 9977-Rys., dated 29th November 1907.*

Notification.—By the Government of India, Department of Commerce and Industry.

In pursuance of Cl. (i) of S. 135 of the Indian Railways Act, 1890 (IX of 1890), and in supersession of the notifications of the Government of India in the Public Works Department, No. 270, dated the 12th June 1890, and No. 136, dated the 5th April 1893, the Governor-General-in-Council is pleased to declare that every railway administration in British India shall hereafter be liable to pay, in respect of property within any local area, every tax which may lawfully be imposed by any local authority in aid of its funds, under any law for the time being in force.

Liability of Railway Administration to taxes newly introduced.—Where railway administration under notification issued under S. 135 of the Railways Act is made liable to pay buildings and land taxes it cannot be held liable to property tax introduced after the notification. When the legislature itself has called the tax by a different name it is not open to the court to launch upon an enquiry with regard to the real or substantial identity of the two. 1927 Mad. 363, 100 I. C. 280.

Railway administration is not exempt from taxation under the Municipal Act. It is under S. 135 that the railway administration enjoys immunity from assessment to taxes levied under the municipal Act. Therefore the repeal of the municipal Act does not *ipso facto* render the railway administration exempt from liability. 1927 Mad. 363, 52 Mad. L. J. 108; 100 I. C. 280.

Tax on buildings and lands.—For the meaning of "Annual Value" see notes under S. 3 (1), pp. 10—20. When buildings

lands are taxed, there cannot be a separate tax on lands under buildings. Such lands are taxed as part of the buildings for, in calculating annual value of a building, the building as a whole including land on which it stands is taken into account. In Simla where both lands and buildings are allowed to be taxed, it is presumed the lands under the houses are taxed twice. Once as land it is assessed to ground tax and then again to house tax as forming part of the building which is assessed to house tax. There seems to be no other way of taxing both lands and buildings. If only vacant lands are taxed and houses with lands underneath are also taxed, then Simla case will not differ from other municipalities where tax on land and buildings is possible.

In 64 I. C. 177, 23 Bom. L. R. 1018, 46 Bom. 205 it was held that a tax on buildings and land justifies the municipal committee in taxing a building and the land on which it stands but the committee cannot levy a tax on buildings and land and a second rate on the land itself.

Arable land has been held to be liable to taxation as a holding under the Bengal Act III of 1884. 6 I. C. 410.

Under the Calcutta Municipal Act it has been held that a compound or boundary wall is not a building liable to assessment for municipal rates: 7 I. C. 890. But according to the Punjab Act building includes a wall and hence the ruling would perhaps be inapplicable in the Punjab.

Occupier-assessments Liability of servant as occupier.—

The plaintiff as the *naib* of a zemindar occupied a small house adjoining the zemindar's *kacheri*, and paid no rent. The municipality assessed him with municipal taxes under S. 85* clause (a) of the Bengal Municipal Act. Whereupon he brought this suit for a declaration that the imposition of the taxes is illegal:

Held, that the occupier of the house was the zemindar, and that he, and not the plaintiff, was liable to be taxed in respect of it. *Naib* is residing in the capacity of a servant of Maharaja. 15 I. C. 909, 15 C. L. J. 689.

Assessment should be legal—Meaning and the effect of S. 61 (1) (a) and S. 3 (1) is clear and they provide that in every case the rate is to be imposed on the annual value of the holding which is deemed to be the gross annual rent at which the holding may be reasonably expected to let, and the proviso is inserted in aid of the assessee, to lay down a maximum to prevent excessive assessments being made.

* Corresponds to S. 21, Small Town Act, or S. 61 (1) (a) of Municipal Act.

If no attempt is made to ascertain the value of the holding and commissioners accept the valuation officer's method of valuation knowing full well that it was based on the estimated cost of the building in entire disregard of principles which the valuation officers were bound by law to adopt, the commissioners must be deemed to have acted *ultra vires* and the assessment cannot be sustained.

A holding in suit was debuttar property held by the plaintiff as shebait. It was occupied by temples and some buildings which were not let. Holdings of similar nature in the vicinity had been let and some of them changed hands. At the time of the valuation of the holding for the purpose of S. 61 (a) all that the valuation officer did was to estimate by guess what he conceived to be the cost of erecting the buildings that he found on the holding and settled the valuation on the estimate so made. Commissioner accepted the valuation officer's basis of valuation:

Held, that the commissioners were not justified in departing from the rule of assessment laid down in S. 3 (1) and the holding ought to have been assessed according to the provision of the Act on the gross annual rent at which the holding may be reasonably expected to let.

Measure of rateable value is defined by statute as the rent which may reasonably be expected; interests on costs or capital value cannot be substituted for the statutory measure but can be looked as *prima facie* evidence in order to answer the question of fact what rent a tenant may reasonably be expected to pay. And where the hereditament is incapable of being compared with other hereditaments which form the subject of letting the amount of capital expended is admissible in evidence as a criterion by which to estimate the rent. *Cf.* 57 Cal. 162; 1930 Cal. 38.

Tax on land or building.—It is sometimes necessary to read the conjunction 'or' and 'and' one for the other. Tax on land or building includes a tax on land and building. *Cf.* 1925 Cal. 1067; 87 I. C. 229.

Sub-clause (b). Tax on professions etc.—A firm or a partnership is a person, and the tax prescribed by this clause is a tax upon a profession or trade or calling, and there can be but one tax when several persons jointly carry on one trade and business. A partner of a firm is liable only to pay the tax payable by the whole firm. Each member of the firm carrying on one business should not be taxed as several distinct persons. Therefore the assessment of one of the the partners of a firm as agent of an absentee partner in his individual capacity as a member of the firm is illegal. *Cf.* 14 Mad. 140.

Profession or trade to be carried on within municipal limits.

— A bank carrying on business at more than one place is a single corporation and is liable at one place for its aggregate income. 15 Mad. 153.

A person carrying on two different professions in two different municipalities is liable for the tax in both the municipalities. 17 Mad. 100.

A person who makes it his business to sell for profit is a "trader" within the Madras Act, IV of 1884, and the fact of what he sells being the produce of his own land does not make him the less a trader provided the sales are conducted in a shop or place of business if he is not personally present at his headquarters for the period making him liable for the tax. 17 Mad. 100.

An officer whose headquarters are within a municipality, does not *ipso facto* exercise his profession or hold such office within the municipality, so as to make him liable to profession tax. 17 Mad. 453.

A pleader residing within a municipality, practised in the District Court situated outside it, and also in other courts situated within the municipal limits. The pleader was held liable to pay profession tax. 18 Mad. 183; *see* also 8 Mad. L. J. 73.

A shipowner exercises his trade at all the ports at which his steamers habitually call to discharge or load cargo, which latter operation may involve entering there and then into contracts with shippers. Where, therefore, the freight-earning contracts by sea carriage are not entered into at a port by the ship's master or the local agent of the shipowner, but elsewhere, the shipowner cannot be held to exercise his trade at the port merely because he employs a shipping agent there to attend to other matters, such as issuing shipping orders and signing bills of lading pursuant to contracts already made and receiving payment of advance freight.

The test is, where, in substance, the business of making contracts is carried on and controlled.

The Clan Line Steamers, having their registered office at Glasgow, call at Cocanada to take in cargo for Europe and also unload any cargo consigned to Cocanada. They are represented by a firm of sub-agents at Cocanada engaged by the Clan Line's Agents at Madras. The sub-agents have no authority to contract with shippers and act only under instructions from the agents; they issue shipping orders to shippers, sign bills of lading for cargo supply and collect any freight that may be payable on the cargo unloaded at

Cocanada. The question in this case being whether this was such an exercise of the trade of the Clan Line or carrying on business within the Municipality of Cocanada as to render them liable to the payment of profession tax under S. 53 of the Madras District Municipalities Act, 1884:

Held, that the Clan Line, being a shipping company which earned profits by the carriage of goods by sea, and in the course of its business traded with, but not necessarily within, port towns in various parts of the world, one of these being Cocanada, could not be said to exercise a trade at that port so as to make the company liable for the payment of profession tax. 50 I. C. 692.

It would not be reasonable to say that a person who is holding an appointment, *e.g.*, a vakil's clerk, is for the purpose of S. 93 exercising the profession of a clerk. The two categories are distinct. There is ground for thinking that the persons intended by the first class are those who exercise their own profession and not clerks who work under those who exercise their profession, though in a literal sense it is possible to say that clerks are exercising the profession of clerks: vakil's clerks can only be assessed to profession tax in a municipality where their masters, the vakils, reside and not where they carry on the work in courts. 1932 Mad. 292, 137 I. C. 585.

On a case referred to the High Court under S. 176 of the Madras City Municipal Act as to whether a person who is a trader in piecegoods and has a shop in Tinnevely where he sells the goods and earns his profit but keeps an agent in Madras to buy goods for him with keeping an office, exercises his trade within the town of Madras:

Held, that on the facts of the case, the trader was not carrying on business in Madras and was not therefore liable to pay profession tax in Madras. 33 Mad. 82 ; 5 I. C. 744.

Where profession tax is to be levied on the income, it has been held that the word "income" means the net income, not gross income. 27 Mad. 547 ; *see also* 22 I. C. 278; 1924 Mad. 754.

By S. 262* (2) of the Act, no suit shall be brought in any court to recover any sum of money collected under the authority of the Act, provided that its provisions have been in substance and effect complied with. A municipality assessed a person under S. 53 and Schedule A, on his estimated gross income:

*Corresponds to S. 86 of the Punjab Municipal Act.

Held, that the word "income" meant "nett income," and consequently the provisions of the Act had not been in substance and effect complied with, and that the court could entertain a suit to recover the amount of tax paid under the assessment. 27 Mad. 547, 14 Mad. L. J. 410.

The underlying principle of professional taxation is that the taxation should be roughly proportional to the professional incomes of individuals.

It has been held in a Madras case under Madras Act, VII of 1904, that the word "capital" means the paid-up capital. The word cannot be interpreted as used in the Indian Companies Act as the Municipal Act and Indian Companies Act are not *pari materia*. 31 Mad. 405.

An insurance company carrying on business at Cocanada, by its agents, at business premises of agents, is not liable to profession tax at Cocanada. 21 Mad. 5; *see also* 24 Mad. 205 and 22 Cal. 581.

A joint stock company carrying on money-lending business through agents in Calcutta where it has a registered place of business is liable to pay license tax for the business carried on. 25 Cal. 483.

The Inspector-General of Police, whose official place of business with the main body of clerks is in Madras, went on tour, and during his absence the Assistant Inspector-General in Madras signed letters for him: *Held*, that the Inspector-General was not assessable to profession tax in respect of the period when he was absent on tour as he exercised no profession or held no office within the municipality during that period. 22 Mad. 145.

A member of a firm of Attorneys-at-Law, and Notaries Public, which paid the profession tax leviable under S. 103 of Madras Act, IV of 1884, also held the appointment of Government Solicitor. He practised no other profession or business than that exercised by his firm; and the duties of Government Solicitor could not be performed by any person other than a practising attorney. The Municipality of Madras having demanded profession tax in respect of the appointment of Government Solicitor in addition to the tax paid by the firm of which the holder of the appointment was a member: *Held* that the tax was rightly levied. 23 Mad. 529.

A person carrying on the business of a money-lender is liable to pay profession tax. 24 Mad. 644. *See also* 18 I. C. 271.

A district forest officer who as representative of Government conducts a depot for the sale of forest produce is not liable to taxation as a trader as the depot is not a shop or as a shopkeeper. 25 Mad. 747.

The income derived by a spiritual leader from offerings made by his disciples is income derived from a profession or calling within the meaning of S. 61 (1) (b). 68 I. C. 996.

A mutual insurance company investing its funds for interest will be a person carrying on business and will be liable to tax under S. 61, clause (b). Cf. 11 Mad. 238. See 11 Mad. 253 noted below.

The term "money-lender" implies a continuous and systematic lending almost amounting to a trade or business. Where therefore a person casually or intermittently invests his surplus funds in mortgage or the personal security, he is not to be considered a money-lender. Where the suit is simply to recover a tax illegally levied, no declaration as to future rights and liabilities should be given. 26 I. C. 96.

The word "person" must be construed to include any company or association or body of persons whether incorporated or not where such construction is not repugnant to the context.

Where therefore two undivided brothers carried on a joint trade in one shop and tax had been paid by one brother : *Held* that no tax was payable by the other brother. 7 Mad. 74.

Where a company which has a head office at one place, where it pays profession tax, and also carries on subsidiary business in another place through an agent who does not however act independently and except under instructions from the head office the company cannot be said to carry on any trade at the latter place and is not liable for profession tax at that place.

A merchant does not exercise his trade or calling in every place where he has customers. If all that a merchant does in a particular place is to solicit orders he cannot be said to exercise or carry on his trade in that place, what is done there being only ancillary to the exercise of the trade. 46 I. C. 500.

A temple in gaining a small addition to its income by investing its surplus funds cannot be said to be exercising a profession or earning a professional income. 1928 Mad. 569, 51 Mad. 301, 110 I. C. 89.

A person residing within the municipality and drawing income from rents and houses situated outside it is liable to pay profession tax. 1925 Mad. 607, 48 Mad. 476, 88 I. C. 662.

Where a person residing within the local limits of a taluk board, derives his income from money transactions in Burma, and the money is transmitted to him within the local area of the board, he is liable to pay profession tax to the board. The governing factor in such a case is whether in fact the income was or was not so received. 1932 Mad. 226.

Calling.—The business of investing the funds of a society for interest is a calling. 11 Mad. 253, 11. Ind. Jur. 369.

Carrying on a trade or practising a profession.—The expression has a well recognised meaning and cannot by any straining of language be made to include a person who merely works for an employer as a salaried clerk.

A person can only be said to be carrying on a trade in the ordinary sense of the word when he is working for his own profit and not when he is in receipt of a fixed salary. Cf. 46 All. 685; 1924 All. 567; 22 All. L. J. 599.

The term “carrying on business” implies something of private or semi-private nature and not the work of a Government official. A person therefore cannot be said to be “carrying on business” within the municipal area in discharging his duties as a Subordinate Judge. 1933 Oudh 91, 10 C. W. N 24.

A public servant such as a Tehsildar or a Naib Tehsildar is appointed to, and holds, an office and does not carry on a profession or a calling. 4 Lah. 256; 1924 Lah. 147.

See also 44 I. C. 910 as regards Munsiffs.

Note.—In view of the recent amendment of S. 61 (*vide* Explanation) the law as laid down above has been superseded in the Punjab.

A person who carried on business in Calcutta tendered for certain goods to be supplied to the Municipality of Howrah. His tender was accepted, and in pursuance of the contract between the parties the person sold goods from time to time to the Howrah Municipality. The Howrah Municipality asked him to take license and prosecuted him for his failure to do so: *Held* that the person could not be said to be one who carried on business in Howrah and therefore a prosecution could not stand. 1928 Cal. 531; 48 Cal. L. J. 54; 111 I. C. 114.

Transacting business means no more than carrying on business and so the mere employment of the agent to do some work for the company within municipal limits will not make the company liable to pay the tax so long as the effective management of the business, its administration and control are vested elsewhere. 52 Mad. 207; 1929 Mad. 409.

Where a person merely buys goods in another place through an agent and the contract for purchase of these goods is concluded elsewhere the place where the goods are bought is not the place where the business was transacted. Where profits are earned in one place while business is controlled from another place it is the latter place where the profits must be held to be earned. 1929 Mad. 146, 108 I. C. 216.

Levying profession tax.—Intention of S. 61 (b) is that any person engaged in active pursuit of a profession, art, trade or calling or holding any appointment, is liable to pay profession tax if the income he enjoys therefrom brings him within any of the clauses specified in the schedule. If and when he retires he ceases to be liable.

The word pension is used generally and without any qualifications and must be held to cover political pension as well as pension in the ordinary sense and consequently a periodical payment made by the State for the support of title conferred by it comes within the definition of "pension."

Profession tax cannot be said to be due till the proper authority has assessed the same by the name of assessee being placed in the proper class.

Assessment of taxes payable by each individual is a contemporaneous operation within the period of taxation (year or half-year) and the power of assessment conferred by Taxation Rules to be properly exercised must be exercised within the half-year to which the assessment relates and not retrospectively for several periods together and period of limitation for any suit for such tax begins to run from such date of assessment

When the words of enactment are clear and imperative, considerations of inconvenience or hardship have no place in its application to circumstances falling within the words. But where the powers given by it were meant to be used in particular circumstances, the fact that great hardship and inconvenience would result thereby is a reason for so construing the words as to meet all attempts

to abuse the power, either by exercising them in cases not intended by the statute, or by refusing to exercise them when the occasion for their exercise has arisen. Then again, statutes which impose pecuniary burdens are subject to the rule of strict construction and in a case of reasonable doubt the construction most beneficial to the subject is to be adopted, though the principle of strict construction is less applicable where powers are conferred on public representative bodies for essentially public purposes. *Cf.* 1930 Mad. 200; 52 Mad. 866.

Profession tax varying according to income.—Tax not fixed at a flat rate for particular profession, calling or trade but varying according to the income of each individual assessee is in the nature of a tax on income and can only be imposed with the previous sanction of the Governor-General-in-Council and if this is not done, the assessee is not liable to pay it. 9 Lah. 424; 107 I. C. 601; 1928 Lah. 332 (2).

Profession tax not illegal.—Where tax is made payable according to the trade or profession or calling of a particular individual, the amount not depending on the income of the person but on the trade, profession or calling which he carried on cannot by any stretch of language be called a tax on income merely because the notification imposing the tax has made a proviso that it shall not be leviable from any person whose income is less than a particular amount. 1931 Lah. 508.

Proviso merely granted an exemption to certain persons who would otherwise be liable to pay the tax, but owing to smallness of income are deemed to be entitled to consideration. 1931 Lah. 508; 32 P. L. R. 403, 131 I. C. 633.

Carrying on a trade.—Transacting business for people is carrying on trade. 1929 Mad. 146 (2), 27 M. L. W. 243, 108 I. C. 216.

Profession Income earned in Rangoon Port brought within municipality.—A person who has a money-lending business at Rangoon, but resides within the limits of the Taluk Board of Devakottah, is assessable to profession tax. He, however, cannot be assessed on the whole of the income derived by him at Rangoon but only on that part of it which he actually received within the limits of the Taluk Board.

In this case a man was liable to pay tax on his income from any sources inside the municipal area. 1932 Mad. 509, 138 I. C. 600, 55 Mad. 848.

Clause (c). Tax on vehicles and animals.—Where a vehicle is liable to wheel tax if kept and used within municipal limits but where the vehicle is used within but kept outside the municipal limits it is not liable to tax. 22 Bom. L. R. 1104.

Where animals are taxed, and licensed and an animal dies and is replaced by another, the owner must pay the tax for the new animal and any tax paid for the dead animal is not taken into account. 8 Mad. 327.

Trolleys running on rails in the streets of a municipal town pushed or pulled by hand and used by contractors for the purpose of carrying materials to fill up a tank are "vehicles" and subject to the wheel tax under Municipal Act. 27 I. C. 497.

Kept within municipal limits.—The possessor of a vehicle without use brings the possessor within the scope of the section. A motor car kept under repair is a car kept by owner and is liable to taxation. Cf. 40 Mad. 545 ; 35 I. C. 581.

Scavenging tax.—The condition precedent for the imposition of a tax is the provision by the municipality of scavenging service and not the actual rendering of it. The fact that a shop in the municipal area is not provided with a latrine is no justification for exemption. Even in the absence of a latrine the scavenging service may do several other duties which may legitimately fall within the scope of scavenging. 46 I. C. 682.

Meaning of house.—A owned a house in Belgaum. It was entered as one house in the Municipal Property Register. It was divided into 17 separate tenements, and the tenements were given separate numbers in the city survey. All the tenements had separate drains which were connected with municipal gutter direct, and were separately occupied each by a different family. Lastly, each tenement had a separate entrance leading through the gate into the highway.

One of the rules framed by the City Municipality of Belgaum under S. 46 provided : Every house that lets out sullage water into the municipal gutters or municipal limits shall pay Rs. 5 per year :

Held, that the cess should be charged in respect of each tenement and that there was nothing inconsistent in construing the word "house" as separate tenements. 1930 Bom. 68 ; 54 Bom. 14.

Scheduled taxes—Octroi.—Goods merely passing through the municipal district in the course of transit to Bombay were “imported” within the meaning of the rule imposing an octroi duty on articles when imported within municipal limits and hence were liable to the duty. 22 Bom. 843.

It is beyond the power, *i.e.*, *ultra vires* of a committee to levy octroi upon goods which were already outside the octroi zone but were brought, after the extension of the octroi limits, within the zone; such goods cannot be said to have been “brought” within the octroi limits for consumption within the meaning of this clause. P. R. 2 of 1910 Cr.; 4 I C. 951.

When the schedule mentioned copper as liable to duty, utensils made of copper cannot be taxed. S B. H. C. R. A. C. 213.

Octroi on post parcels.—It cannot be contended that goods brought in by a postman are not goods brought into the octroi limits. Cf. 28 I. C. 480.

Liability of Government to pay octroi duty.—Unless expressly exempted the Crown is bound to pay the town duties. 25 Mad. 457.

Water tax and Government Notification.—Under Punjab Government Notification No. 585, dated 8th October 1897, every occupier of a house within 500 feet from public watermain when the house is not connected with the main was liable to pay water tax at 2½ per cent. on the rental of the house. In a case a person who occupied a house within 500 feet from the watermain refused to pay the tax on the ground that there was no hydrant within 500 feet from the house. On a reference to the Chief Court it was held that the expression “500 feet from the public watermain in the said notification sanctioning the imposition of water tax on the rental of all houses and buildings means the public watermain from which water can be drawn” and not “public watermain absolutely closed and from which no one can benefit as it stands.”

A municipal committee, therefore, would not be justified in claiming such tax from the occupier of a house merely by reason that a closed water pipe passes within 500 feet of the house and the nearest hydrant is not within 500 feet of it as such occupier is not in a position to benefit by the water-works. 42 P. R. 1913; 17 I. C. 149.

So situated, etc.—S. 61 which prescribes the imposition of a water tax upon buildings and lands so situated that their occupiers may benefit by the works, means buildings

or lands so situated that their occupiers can derive benefit from the works as they stand, and not that by having further connections made and paying an additional tax they can put themselves into a position to benefit. P. R. 42 of 1913; 17 I. C. 149.

S. 80-A (3) (a) of Government of India Act.—Tax-Validating Act.—The Punjab District Board (Tax Validating) Act of 1927 is not *ultra vires* and has been placed on the statute book according to law having regard to S. 80-A (1) and (3) and *proviso* of Government of India Act.

The words “new tax” in cl. (a), sub-s. (3), S. 80-A are wide enough to cover the case of a tax which has been newly or recently imposed. 1932 Lah. 87, 134 I. C. 110, 33 P. L. R. 135.

Imposition of Haisiat Tax—Validating Act.—Where the decree is brief and ambiguous the pleadings of the parties should be looked at to ascertain the precise scope and meanings of the decree.

On imposition of a tax known as the Haisiat Tax by the District Board, P instituted a suit for injunction and obtained a decree restraining the Board from realizing the tax. Subsequently on the passing of the Validating Act III of 1927, validating the imposition of the tax the board proceeded to realize the tax from the assessees. P presented an application for execution of his decree against the Board. From the pleadings and issues it appeared that what P claimed was that the Haisiat Tax as imposed under S. 30, Punjab District Board Act, was *ultra vires* and it was this tax that the decree restrained the Board from realizing:

Held, that the tax which the Board were trying to realize derived its sanction not merely from the Punjab District Board Act, but the Validating Act, 1927. To such a tax the decree had no application at all and could therefore be executed as regards the realization of such tax. 14 Lah. 230; 1933 Lah. 41; 140 I. C. 533.

Miscellaneous — Estoppel.—The plaintiff paid a house-tax at the rate of Rs. 6 for the year 1890 without any protest. When the tax was sought to be levied from plaintiff at the same rate for the year 1891, he objected to the levy as illegal and excessive and paid the tax under a protest. He then sued to recover what he alleged was an excess charge of Rs. 5 in respect of the tax for 1891. His claim was rejected on the ground that he was estopped from recovering the alleged excess by reason of his having paid the tax for 1890 with-

out protest: *Held* that the suit was not barred. The levy of tax in each year gives a new and distinct cause of action and the payment of the tax without protest for one year does not bar a suit to recover a sum paid in a subsequent year under protest on account of a tax which was not legally chargeable for that year. 17 Bom. 510.

Limitation of suit for the recovery of taxes.—Assuming that such a suit lies the suit will be governed by Article 120 of the Limitation Act. 3 Mad. 123.

Jurisdiction of Small Cause Court.—A suit for recovery of a municipal tax is not cognizable by a Small Cause Court under Act XI of 1865. 9 Mad. 110 and 3 Mad. 110.

Procedure
to impose
taxes.

62. (1) A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under section 61.

(2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate or the tax to be imposed, and the system of assessment to be adopted.

(3) Any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration.

(4) If the committee decides to amend its proposals or any of them, it shall publish amended proposals, along with a notice indicating that they are in modification of those previously published for objection.

(5) Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3).

(6) When the committee has finally settled its proposals, it shall, if the proposed tax falls under clauses (b) to (f) of sub-section (1) of section 61 direct that the tax be imposed, and shall forward a copy of its order to that effect through the Commissioner, to the local Government and if the proposed tax falls under any other provision, it shall submit its proposals together with the objection, if any, made in connection therewith, to the Commissioner.

(7) If the proposed tax falls under clause (a) of sub-section (1) of section 61, the Commissioner, after considering the objections received under sub-sections (3) and (5), may either refuse to sanction the proposals or return them to the committee for

further consideration, or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the local Government a copy of the proposals and his order of sanction; and if the tax falls under sub-section (2) or (3) of section 61, the Commissioner shall submit the proposals and objections with his recommendations to the local Government.

(8) The local Government on receiving proposals for taxation under sub-section (2) or (3) may sanction or refuse to sanction the same, or return them to the committee for further consideration.

(9) When any such proposal which requires the further sanction of the Governor-General-in-Council, has been sanctioned by the local Government, it shall submit the same to the Governor-General-in-Council, with the objections (if any) received through the committee; and the Governor-General-in-Council may sanction the proposal, or refuse to sanction it, or return it to the local Government for further consideration.

(10) (a) When a copy of an order under sub-sections (6) and (7) has been received, or,

(b) when a proposal has been sanctioned under sub-section (8) or sub-section (9),

the local Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than three months from the date of the notification, on which the tax shall come into force.

(11) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July, or on the first day of October in any year, and if it comes into force on any other than the first day of the year by which it is leviable shall be leviable by the quarter till the first day of such year then next ensuing.

(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.

Notes.

S. 45 of the old Act. In Act III of 1911 the old section was slightly modified to suit amendments of S. 61. S. 62 of the Act III of 1911 has now been entirely recast and substituted by S. 30 of Act III of 1933. Cls. 1, 2 and 3 have been retained while Cls. 8 and 9 now appear as Cls. 11 and 12. The remaining clauses have been entirely recast,

Analogous Law:—

Ss. 121, Behar and Orissa Municipal Act, 1922.

Ss. 75 & 76, Bombay Municipal Boroughs Act, 1925.

Ss. 60, 61 & 62 (a) (ii), Bombay District Municipal Act, III of 1901.

Ss. 62 (8) & 96 Bombay City Municipal Act, III of 1888.

Ss. 51, Burma Municipal Act, III of 1898.

Ss. 61, 63, 65 and 89, Cantonment Act, II of 1924.

S. 67, Central Provinces Municipal Act II of 1922.

Ss. 62 (1), 80, & 82 Madras District Municipal Act, V of 1920.

Ss. 131, 132 & 135, U. P. Municipalities Act, 1916.

S. 31, Punjab District Board Act, 1883.

Procedure.—The Act of its own force creates neither any taxes nor any taxpayers, but provides that, if the proper measures are taken, both may come into existence and empowers the municipalities to take those measures. There is no provision for taxing at all otherwise than by prescribing the machinery. If it does not exist, there can be no tax at all; nor unless it is applied can there be any debt due from any person. The particular measures prescribed are mentioned in the appropriate sections afterwards and unless the conditions prescribed are fulfilled, the tax has no legal existence. "A statute not only enacts its substantive provisions but as a necessary result of legal logic, it also enacts as a legal proposition everything essential to the existence of the specific enactments." 1 Mad. 158.

Formalities for imposing taxes.—The S. 62 (12) has not introduced any new change in the existing state of the law beyond making S. 62 self-contained, it expressly dispenses with the necessity of reading it in conjunction with the corresponding provisions of the General Clauses Act. Therefore whether the old municipal Act or the new one is applied, the law makes the notification of the imposition of the tax issued by the local Government the conclusive proof of the fact that "the tax has been imposed in accordance with the provisions" of the law applicable and so the moment the notification is proved to have been published the judge is expressly directed to dispense with all corroborative evidence and to forbid all opposing evidence and to draw the presumption of law that tax is imposed in accordance with the provisions of the law authorizing its imposition.

The Act being intended to make better provisions for organization and administration of municipalities, any tax imposed as a means to this end is within its purposes.

The statutory requirement is the presence of a particular quorum for the validity of a special meeting. It does not require that the quorum must be of members served with notice of meeting.

The provisions in respect of the certificate that the proceedings have been confirmed as required by the business bye-laws are merely directory and not mandatory.

Taking into consideration the intention of either sending, giving or serving notice of a special meeting which is to invite every member because he must be given facility to exercise his right to attend it and influence its deliberations, the committee, if it adopts the procedure of sending round one common notice to all members can be reasonably expected to send it round to everyone of the members concerned as often as possible in order that the call may come to his notice.

Where municipal records are in due order and state that meetings are held, it will be presumed, in the absence of clear evidence to the contrary, that such meetings are duly summoned and properly conducted. Thus mere circumstance that the matter of personal service of notice of a meeting to a member is left in doubt and its proof is not forthcoming is no reason for holding that meeting is not duly summoned and properly conducted.

A formality which is directed by the legislature is imperative but if it is prescribed by ordinary individuals and corporations it is directory merely. 1930 Nag. 157.

Imposition of a new tax (S. 62).—The necessary formalities under S. 60*, Bombay District Municipal Act were observed, and the sanction of Government was obtained to the imposition of terminal tax on the articles mentioned in the schedule, with the exception of item 20, which included fruits. The municipality then published a notice under S. 60* that a tax would be levied on these articles from a certain date. The municipality, however, were dissatisfied with the order of Government disallowing the item 20, and they moved Government to accord their sanction to the addition of item 20 to the list of articles liable to the terminal tax. This was done without observing the formalities required by S. 60* and without giving any notice to the objectors, or affording them any opportunity of raising any objections to the proposed addition. The suggestion of the municipality was approved by Government, and item 20, including fruits, was added to the list:

Held, that the levy of tax on articles included in item 20 amounted to the imposition of a new tax and therefore for this addition made the procedure provided by Chapter V should have been followed and the muni-

* S. 62 of the Punjab Municipal Act.

cipality had no right to levy a new tax without complying with the formalities which are laid down by the Act. 1927 Bom. 527, 104 I. C. 666; 51 Bom. 764.

Defect in procedure.—The procedure prescribed should be strictly adhered to. If therefore the special meeting of the committee at which the objections of the assessee to a proposed tax are considered or the special meeting at which the tax is finally imposed were neither of them properly constituted the imposition of the tax will not be valid. 21 All. 348.

Failure to fix the scale.—If the commissioners at a meeting did not fix the scale or rate of the tax, the assessment or levy of the tax must be deemed to be *ultra vires*. 9 I. C. 218.

Notification not mentioning specific rate leviable but calling for objection is not the notification contemplated by S. 80* Madras District Municipal Act and municipality has no jurisdiction to levy the tax. 1932 Mad. 1; 62 Mad. L. J. 175; 136 I. C. 346.

Provisions directory or mandatory.—As the authority to levy taxes does not exist unless conferred by statute, so it can be exercised no further than it is clearly given. For instance, where a municipality is authorised to levy taxes after contracts for lighting and water purposes have been made, they have no power to levy a water and lighting tax before the contracts are made. If the mode in which the authority shall be exercised is prescribed, that mode must be pursued.

There is, however, some difficulty at times to distinguish provisions which are imperative from those which are directory merely. It may be laid down generally that provisions whose object is to protect the tax-payer are mandatory and that those intended merely to promote despatch, method, system, etc., are generally directory. For instance, a provision requiring a tax to be levied on a day named is merely directory; and the duty may be performed within a reasonable time thereafter. Provisions as to assessment roll are mandatory. Where a tax is not legally imposed, the assessment will be invalid and liability to pay the same does not arise. Aiyangar's "Corporations in British India," p. 276.

Rate of tax.—Under S. 62, a percentage once fixed remains in force inspite of new valuation until the order of

* Corresponds to S. 62 of the Punjab Municipal Act.

the commissioners determining such percentage is rescinded and until the commissioners at a meeting determine such other percentage on the valuation of the holdings at which the rate will be levied from the beginning of the next year. *Cf.* 1929 P. C. 272, 119 I. C. 622.

Enhancement of tax.—The procedure for enhancement of an existing tax must be the same as that prescribed for the imposition of a new tax. 21 All. 348.

Notice of meetings for imposing taxes.—Under Bombay District Municipal Act (VI of 1873) it was held that as required by law all the members of the committee were entitled to notice and such a notice was a condition precedent to the validity of the tax itself. The mere fact of the sanction of the Governor-General-in-Council could not cure the inherent defect and illegality of such a resolution of the meeting of the commissioners. The rules as to notice are mandatory. 7 Bom. 399.

Where notice as required by the section was insufficient, liability for payment could not be avoided and where nonpayment of a tax is an offence, the assessor cannot avoid punishment. The maximum *quod fieri non debet factum valet* was applied. The revision of the tax was not held to be a nullity. 7 Mad. 65.

Section 62 (2).—When the municipal council proposes to levy a tax it must inform the public at what rate it is going to collect the tax. A reference to the provisions laying down the maximum rate is not sufficient. 1926 Mad. 830; 96 I. C. 690.

Clause (3).—These provisions for forwarding the opinion of the municipality on the objections of the inhabitants to the local Government are an essential part of the machinery provided by the section for the legal imposition of a tax. These clauses expressly require the municipality to take such objections into consideration and to report their decision thereon to the local Government. The requirements will not be satisfied by the chairman of the committee considering these objections and reporting his decision to local Government. Had the object of the legislature been solely to give the municipality an opportunity of answering these objections, one should expect to find only a simple direction to forward the objections with such comments on them as the municipality might think proper. *Cf.* 9 Bom. 51.

Presumption as to the regularity of the procedure.—It will be presumed that the municipality has used the regular

procedure, and that the common course of business has been followed in particular cases. A person alleging that any tax is illegal because the strict procedure was not followed, must prove his defence. 20 Bom. 732; 1933 Cal. 347.

Under S. 114 (e), Evidence Act, if an official act is proved to have been done, it will be presumed to have been regularly done; but where certain things are required to be done by statute before any liability attaches in respect of any right or obligation it is for him who alleges that it has been incurred to prove that the prescribed things have been actually done, and no presumption arises of their having been done.

Where, therefore, it is not proved that the order applying Part VI, Municipal Act, to a particular municipality was promulgated under the provision of S. 222 of the Bengal District Municipal Act, no presumption can arise that it was so promulgated. The fact that in the previous year the accused had applied for a license does not throw upon him the *onus* of showing that the order was not promulgated as required by the Act. 1932 Cal. 833; 36 C. W. N. 823; 139 I. C. 134; 1933 Cal. 347.

Consideration of objections.—In a case innumerable petitions against the proposed taxation were received and were ordered to lie on the table for 21 days for the members to read. In the meeting convened for considering them a majority of members pronounced them to be invalid. The petitions were not read at the meeting. It was held it was sufficient consideration. Section only requires consideration and is silent as to the amount and quality of that consideration. 21 Bom. 630.

Conditions for the legal imposition of tax.—In 1891 the Surat Municipality appointed a committee to revise the taxation of the city proposing to reduce some of the existing taxes and impose others with a view of obtaining a better water-supply for the city. A scheme of taxation drafted by the committee was subsequently adopted by the municipality and it included a new house tax. The municipality then issued a notice under S. 21 of Act VI of 1873 (corresponding to S. 62 of the Punjab Act) setting forth the particulars of the proposed tax and requiring objections to be lodged within a fortnight from the date of the notice. A number of objections were received. Then at a special meeting these objections were considered and held to be invalid. The proposal was forwarded to Government and the tax was sanctioned. The plaintiff then brought a suit for permanent injunction restraining the municipality from

levying the house tax from the plaintiff. Plaintiff alleged that the provisions of Bombay Act, VI of 1873 were not observed and the imposition of the tax was illegal. He contended that, because municipal commissioners who passed the resolution regarding the tax did not themselves know for what purpose the tax was to be imposed, there was no valid imposition of the tax by a municipal body intending to levy it, but it was held that under the circumstances, the object of levying the tax was well-known to the commissioners. The plaintiff further raised several objections in connection with the notice under S. 21 of the Act, but they were all overruled by the High Court holding that merely because the notice convening the meeting did not specify the object of the meeting, the resolution passed at it could not be deemed irregular or invalid, that it was not necessary to mention the purpose of the tax in the notice, that the notice was not bad for having omitted to specify the nature and amount of the tax because the statement therein that such amount would depend on the valuation of the property was sufficient for the purpose.

Plaintiff also questioned the legality of the tax on the ground that the various objections of the rate-payers had not been sufficiently considered, but the court held that the said objections had all been taken into consideration. He also contended that the tax was bad because of the omission to state whether it was to be paid in advance or not, but it was clear that the tax had been made payable partly in advance and partly in arrears.

The last contention of the plaintiff was that the assessment of the value of the property classified had been made upon an erroneous basis and not according to the amended rules, but the High Court was of opinion that even if this contention were well founded, it could not effect the validity of the tax. The persons taxed had a right of appeal to have the valuation set right. 21 Bom. 630.

Tax payable half yearly—tax increased during 2nd half year. — A gentleman was assessed to profession tax and paid one moiety of the tax for the first half-year. During the second half-year the Act was repealed and the new Act raised the amount of the tax and a moiety of this increased tax was demanded from the gentleman for the second half-year. The profession tax was a yearly tax payable in two instalments. It was contended on behalf of the assessee that the assessment under the old Act continued for the year and that under S. 2 the tax levied under the new Act continued for the full year: *Held* that though the tax was a yearly tax,

half-yearly liability is incurred in respect thereof by the tax-payer and that for the second half-year he must pay the moiety at a higher rate according to the new Act which came into force before the second half-year commenced. 8 Mad. 429.

A tax leviable by the year is under this section leviable by the calendar year. P. R. 4 of 1898.

Clause (12).—The section precludes a court from holding that a tax which has been duly notified has not been legally imposed. A defect in the constitution of the committee which imposed the tax is a mere informality and is protected under sub-section 12. Cf. 46 I. C. 682.

A public notification that a tax has been imposed is conclusive evidence that it has been imposed in accordance with law and a civil court is debarred from questioning the legality of the imposition. A suit for restraining the committee from imposing or collecting the tax is not maintainable. Cf. 1923 Rang. 75 and 1930 Nag. 157.

Procedure for assessing immovable property.

Preparation
of assessment
list.

63. The committee shall cause an assessment list of all buildings and lands on which any tax is imposed to be prepared containing —

- (a) the name of the street or division in which the property is situated ;
- (b) the designation of the property, either by name or by number, sufficient for identification ;
- (c) the names of the owner and occupier, if known ;
- (d) the annual value, area, or length of frontage on which the property is assessed ; and
- (e) the amount of the tax assessed thereon by the committee.

Notes.

S. 56 (1) of the old Act.

Executive Officers Act.—Powers under this section shall not be exercised by committee but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended, *vide* S. 4 (b) of the said Act.

Analogous Law:—

- | | |
|---|---|
| S. 103, Bengal District Municipal Act, 1884.
S. 136, Bengal Municipal Act, XV of 1932.
Ss. 89, 101, & 105, Behar and Orissa Municipal Act, 1922.
S. 78, Bombay Municipal Boroughs Act, 1925.
S. 63, Bombay District Municipal Act, III of 1901. | S. 156, Bombay City Municipal Act, III of 1888.
S. 60, Burma Municipal Act, III of 1898.
S. 143, Calcutta City Municipal Act, III of 1923.
S. 66, Cantonment Act, II of 1924.
S. 141, U. P. Municipalities Act, 1916. |
|---|---|

General Clauses Act—assessment under new Act.—Assessment under S. 101 of the Bengal Act, is not a right acquired within the meaning of General Clauses Act merely because assessment under that Act is more beneficial than the one subsequently imposed by the new Act; but is a liability incurred. The assessment under the Behar and Orissa Municipal Act is not, therefore, *ultra vires* when it is properly levied. Moreover, the result of allowing the contention of *ultra vires* would be that any person who had been assessed under the old Bengal Act with all its provisions could not in any circumstances whatsoever come under the jurisdiction of the municipalities of Behar and Orissa under the Act of 1922 and it will have the effect of repealing S. 1 of the Act of 1922 and thus result in assessment of such persons under an Act which is already repealed. 1930 Pat. 189.

Scheme of assessment.—The scheme of assessment provided by the Act is that there shall be a preliminary valuation prepared by the committee (Ss. 63 and 64), that complaints against that valuation shall be investigated and the valuation determined by the committee and list shall be authenticated by two members (Ss. 65 and 66) and if it is desired to amend the lists thereafter, the owner of the property is entitled to object and must be heard by the committee before the lists can be amended (Ss. 67 and 68). Where the preliminary list published assesses some property at Rs. 350 and the owner objected to this as being unduly high and was informed that his objections will be investigated on a particular date but on his failure to attend, the assessment was enhanced to Rs. 380, it was *held* that the enhancement was illegal and the owner was entitled to a fresh notice before the assessment should be enhanced.

Where it is alleged that the committee has disregarded the provisions of the Act which lay down the procedure to be followed by it in determining the annual value, the question arises as to the basis of the principles of assessment and the matter can be referred to the High Court under S. 84. *Cf.* 1927 Rang. 123; 101 I. C. 666,

S. 62 lays down the general procedure to be followed in imposition of all or any of the taxes under the Municipal Act; Ss. 63 to 68 lay down the further procedure which must precede the levy of a tax on buildings and land.

Publication
and comple-
tion of assess-
ment list

64. When the assessment list has been completed, the committee shall give public notice thereof, and of the place where the list or a copy thereof may be inspected ; and every person claiming to be either owner or occupier of property included in the list, and any authorised agent of such person, shall be at liberty to inspect the list and to make extracts therefrom without charge.

Notes.

S. 57 of the old Act.

Executive Officers Act. – Duty imposed under this section shall not be performed by the committee but may be performed by Executive Officer in municipalities to which the Executive Officers Act has been extended, *vide* S. 4 (b) of that Act.

Analogue Law:—

S. 112, Bengal Act, III of 1884.

S. 64, Bombay Act, III of 1901.

S. 80, Bombay Municipal
Boroughs Act, 1925.

S. 70, Madras Act IV of 1884.

S. 61, Burma Act. III of 1898

S. 142, U. P. Act, II of 1916.

S. 115, Behar and Orissa Act,
VII of 1922.

S. 67, Cantonment Act, II of 1924.

Public notice
of time fixed
for revising
assessment
list

65. (1) The committee shall at the time of the publication of such assessment list give public notice of a time, not less than one month thereafter, when it will proceed to revise the valuation and assessment ; and in all cases in which any property is for the first time assessed, or the assessment thereof is increased, it shall also give notice thereof to the owner or occupier of the property.

(2) All objections to the valuation and assessment shall be made in writing before the time fixed in the notice, or orally or in writing at that time.

Notes.

S. 58 of the old Act.

Executive Officers Act. – Duties under this section shall not be performed by the committee but may be performed by Executive Officer in municipalities to which the Executive Officers Act has been extended under S. 4 (b) (ii). The power to revise the valuation and assessment conferred by S. 65 shall be exercised by a sub-committee consisting of the executive officer and two members appointed for the purpose.

Analogous Law :—

Ss. 113, & 135, Bengal District Municipal Act, 1884.
 Ss. 147 & 148, Bengal Municipal Act, XV of 1932.
 S. 116, Behar and Orissa Municipal Act, 1922.
 S. 81, Bombay Municipal Boroughs Act, 1925.
 S. 65, Bombay District Municipal Act, III of 1901.

Ss. 160 & 162, Bombay City Municipal Act, III of 1888.
 S. 62, Burma Municipal Act, III of 1898.
 S. 137, Calcutta Municipal Act, III of 1923.
 S. 68, Cantonment Act, II of 1924.
 S. 143, U. P. Municipalities Act, 1916.

Notice.—The notice to the owner or occupier must state that the property has been proposed to be assessed and that this assessment will be revised within one month of the publication of the notice. In a case a municipal council purporting to act under a similar provision served upon the plaintiff a notice in the following terms: "I have the honour to forward herewith a list showing the amount of land and water taxes due for 1895-96 on *devastanam* lands within the limits of this municipality and to request that you will be good enough to cause the amount to be remitted to this office, etc:." *Held* that the notice was bad. It was more a demand for tax assumed to have been already properly assessed than a notice that the plaintiff will be assessed as from some future date mentioned in it so as to give her an opportunity, if so advised, of appealing against the assessment. 23 Mad. 532.

Revision of assessment.—It is clearly the duty of the municipal committee or the executive officer under the section to issue a notification when the committee has completed the revision of the assessment books which will give the tax-payers due notice that they have an opportunity of disputing the revised assessment. To give a vague notice that the council "proposes to increase the taxes" is certainly not to give a notice that the committee has revised the assessment of their property and that they may come in and dispute it. Where such a notification is not such as should have been issued and where the tax-payers are not, as required by the rules, informed that a revision of the assessment of their property has been completed and that they have an opportunity of coming forward and disputing it as it affects them, a tax imposed without such a compliance with the Act in that respect is clearly illegal. *Cf.* 1931 Mad. 808.

Municipal council is not a public officer and no notice is necessary under S. 80, C. P. C. and if the contention were upheld the provisions of S. 49 of this Act would be superfluous. 1931 Mad. 808.

Although the Act requires that the assessment of property for the purpose of house tax should be revised every year, there is nothing in the Act to show that, if for any reason revision or assessment is not made every year no house tax can be collected or that the old assessment lapses. In such a case the tax should be collected on the old assessment. Madras Act requires revision every five years. *Cf.* 1931 M. 808.

No doubt it is desirable that the notification that a tax is to be levied or enhanced should be published before the date from which the levy or enhancement comes into force but S. 80* of the Madras Act, IV of 1884 as it stood then, cannot be read as a vital and pre-requisite necessity so that if the publication does not precede the date on which the tax is to come into force, the levy of tax from that date is illegal. There is nothing in the section to show that the tax is to become legally enforceable only after the notification is published. The section lays the duty on the chairman to publish the notification "forthwith." The fact that a notification happened to be published in the District Gazette five days after the commencement of the financial year does not make the levy of the tax at the enhanced rate from the beginning of that year illegal. 135 I. C. 311; 1931 Mad. 808.

Revised assessment—A revised assessment affects a variety of persons with a variety of different interests and some of the assesseees are not entitled to represent the other assesseees in a suit to obtain a permanent injunction restraining the municipality from collecting the taxes under the revised assessment. 1933 Bombay 175; 57 Bom. 270.—

Under S. 162, Bombay Municipal Act, special notice on an owner of a house should be served when there is an enhancement in assessment. If the notice is served on a person who recovers rent on behalf of the family, the service may be called proper service under the Act, because such a servant is a servant of the family of the owners within the meaning of sub clause (b) of S. 435† of the Act. 1928 Bom. 104

In construing these sections I think it is permissible to consider the aim, the scope and the object of the statute. If the intention of the legislature was that the widest possible powers should be given to the municipal authorities in order that the object of the Act should be carried out, then

* Corresponds to S. 65 of the Punjab Act, but the wording is peculiar.

† Corresponds to S. 215 of the Punjab Municipal Act.

I think it is the duty of a judge to put upon these sections what is called a beneficial construction.

In my opinion, having regard to the object of the City of Bombay Municipal Act, any construction which would facilitate the carrying out of that object ought to be adopted rather than any construction which would retard the fulfilment of the purpose and object of the statute. 1928 Bom. 104, 30 Bom. L. R. 169; 108 I. C. 488.

Increase of assessment — onus.—The *onus* is not on the corporation where the corporation seeks to increase the assessee's assessment to show that the value of the land has increased. It is for the assessee to show that it has not increased. 1928 Cal. 450; 32 C. W. N. 378; 109 I. C. 618.

S. 65 and S. 86.—The rate fixed for the tax continues unchanged and is to be considered as the rate for the year until altered. There is no provision in the Act which provides that at every time there is a fresh valuation, there must be a formal meeting to fix the percentage, even though the committee intended the same percentage to continue. The municipality may, owing to ignorance of the facts, assess the owner where they ought to assess the occupier and *vice versa*. The aggrieved person has his remedy under S. 65, which provides that a person who disputes his liability to be assessed may apply to the committee under that section. Until the aggrieved person has exhausted the remedies which the Act provides, he cannot invoke the assistance of the civil courts. Cf. 1926 Cal. 607; 53 Cal. 453.

Assessment list presumed to be correct.—Although an assessment list prepared by a municipality is not the final or sole test of the liability of the assessee to pay the particular taxes there is a presumption that the assessment list was duly published at the time the assessment was made and that after due publication it became final, and if an assessee alleges in the face of an entry in such a list that an alleged tax was never paid by him or his predecessor-in-interest but by a third person, the burden is on him to prove that it was so realized. 1930 Pat. 370; 126 I. C. 908.

66. (1) After the objections have been enquired into and the persons making them have been allowed an opportunity of being heard either in person or by authorized agent, as they may think fit, and the revision of the valuation and assessment has been completed the amendments made in the list shall be authenticated by the signatures of not less than two members executive officer

Settlement
of list.

of the committee, who shall at the same time certify that no valid objection has been made to the valuation and

assessment contained in the list, except in the cases in which amendments have been entered therein; and, subject to such amendments as may thereafter be duly made the tax so assessed shall be deemed to be the tax for the year commencing on the first day of January or first day of April next ensuing as the committee may determine, or in the case of a tax then imposed for the first time for the period between the date on which the tax comes into force and such first day of January or April, as the case may be.

(2) The list when amended under this section shall be deposited in the committee's office and shall there be open during office hours to all owners or occupiers of property comprised therein or the authorized agents of such persons, and a public notice that it is so open shall forthwith be published.

Notes.

S. 59 of the old Act.

Executive Officers Act.—In municipalities to which this Act is extended the words "executive officer" shall be deemed to be substituted for words italicised. Powers under this section shall not be exercised by committee but may be exercised by executive officer in municipalities to which the Executive Officers Act has been extended.

Analogous Law:—

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|---|--|
| S. 114, Bengal District Municipal Act, 1884. | S. 166, Bombay City Municipal Act, 1888. |
| S. 149, Bengal Municipal Act, XV of 1932. | S. 63 (1), Burma Municipal Act, III of 1898. |
| S. 117, Behar and Orissa Municipal Act, 1922. | S. 140, Calcutta City Municipal Act, 1923. |
| S. 81 (4) & (5), Bombay Municipal Boroughs Act, 1925. | S. 69, Cantonment Act, II of 1924. |
| Ss. 65 (3) (4) and (5), Bombay District Municipal Act, III of 1901. | Ss. 143 & 144, U. P. Municipalities Act, 1916. |

Assessment of tax without disposal of objections.—Where an assessee preferred his objection under Municipal Act but municipality failed to dispose of that objection in the manner provided in the Act, a suit by the municipality to enforce its claim for the tax assessed by it can be rightly dismissed. 1929 Pat. 235; 119 I. C. 884.

Jurisdiction of civil courts.—Having regard to the provisions of Ss. 64–69 no civil court has jurisdiction to enquire into a question of fact which the legislature has placed within the jurisdiction of the municipal authorities the subject matter of the Act, *e. g.*, imposition of tax on a holding as a dwelling house when the validity of the proceeding

under which or by which the municipal authorities came to assess this holding as a dwelling house is not challenged and is not shown to be *ultra vires* of the authorities. Cf. 1930 Pat. 189.

Assessment *ultra vires*.—Where an application objecting to assessment is not referred to commissioners as provided by S. 114* of the Bengal District Municipal Act, all the subsequent proceeding with regard to assessment and realization of taxes are *ultra vires* and the applicant is entitled to relief in respect thereof.

The municipal authority after acting *ultra vires* in not disposing of the objections to the original assessment under S. 113†, cannot protect themselves by making fresh assessment and leaving the original objection to the assessability of the holding undisposed of. The two assessments cannot be treated independently.

Where demand is made from a tax-payer and he pays the taxes under protest, that is to say, on an understanding that he would be entitled to a refund if his contention that the demand was *ultra vires* was correct a suit for the recovery of such taxes need not be filed within three months. 1926 Pat. 547, 96 I. C. 444.

List not signed still valid.—It may be that if the list is not signed it cannot be accepted as conclusive evidence as provided by the section. But the mere fact that the officer did not sign the list cannot affect the question as to whether the levy was legal or not, particularly when the amount fixed under the list is not challenged. 1921 Bom. 236, 45 Bom. 611, 60 I. C. 578.

Revised list not made by executive officer or standing committee to whom the powers are delegated.—The Municipality of Lonavala, constituted under the Bombay Municipal Boroughs Act, 1925, did not appoint a standing committee as required by S. 37‡ but made a rule which was sanctioned by the Government under S. 58‡ (b) [= 31 (f) of Punjab Act] read with S. 46‡ [= 33 of the Punjab Act] of the Act delegating to the president all powers or duties or executive functions to be exercised or performed on behalf of the municipality. The municipality prepared under S. 80‡ a revised assessment list of houses within its limits and objections to which were disposed of by the president under the authority of the above rule:

* Corresponds to S. 66 of the Punjab Act.

† S. 65 of the Punjab Act.

‡ References are to sections of the Bombay Municipal Boroughs Act, 1925.

Held, that the provisions of S. 37* (2) for the construction of the standing committee were mandatory and did not contemplate the exercise of the functions of the standing committee by any other body, or their delegation to anyone else otherwise than as mentioned in the proviso under S. 81*; the rule delegating the powers of the standing committee to the president was therefore *ultra vires* and did not authorize him to hear and decide the objections. 1933 Bom. 175; 57 Bom. 270.

Further
amendment
of assessment
list.

67. (1) The committee may at any time amend the list by inserting the name of any person whose name ought to have been or ought to be inserted, or by inserting any property which ought to have been or ought to be inserted, or by altering the assessment on any property which has been erroneously valued or assessed through fraud, accident or mistake whether on the part of the committee or of the assessee, or in case of a tax payable by the occupier by a change in the tenancy, after giving notice to any person affected by the amendment, of a time, not less than one month from the date of service, at which the amendment is to be made.

(2) Any person interested in any such amendment may tender his objection to the committee in writing before the time fixed in the notice, or orally or in writing at that time and shall be allowed an opportunity of being heard in support of the same in person or by authorized agents as he may think fit.

Notes.

S. 60 of the old Act.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officer in municipalities to which the Executive Officers Act has been extended, *vide* S. 4 (b) of that Act. Power to amend the assessment list conferred by S. 67 (1) shall be exercised by a sub-committee consisting of the executive officer and two members of the committee appointed by the committee for the purpose, *vide* S. 4 (b) (ii) of Executive Officers Act, 1931.

Analogous Law:—

S. 108, Bengal District Municipal Act, 1884.	S. 167, Bombay City Municipal Act, III of 1888.
S. 136, Bengal Municipal Act, XV of 1932.	S. 65, Burma Municipal Act of 1898.
Ss. 95, 96 & 107, Behar and Orissa Municipal Act, 1922.	Ss. 144 & 146, Calcutta City Municipal Act, III of 1923.
S. 82, Bombay Municipal Boroughs Act, 1925.	S. 71, Cantonment Act, II of 1924.
S. 66, Bombay District Municipal Act, III of 1901.	S. 147, U. P. Municipalities Act, 1916.

* References are to sections of the Bombay Municipal Boroughs Act, 1925.

No fresh notice after revaluation.—Under S. 158 corresponding to S. 67 of the Punjab Municipal Act it was held that a notice is necessary for revaluation but when after hearing objections the chairman alters the valuation already made by him no fresh notice is necessary. 37 I. C. 932.

Revision of assessment by addition to a holding by change of municipal boundaries.—The section provides for re-valuation and re-assessment of any holding the value of which has been increased by additions or alterations to any building thereon, but not of any holding the value of which has been increased by the additions of land.

Where a portion of a holding, being within the limits of a municipality, was assessed with municipal tax and afterwards during the currency of that assessment the rest of the holding was also included within the municipality by reason of the extension of the municipal limits, whereupon the municipality assessed that portion with additional municipal tax:

Held, that the additional assessment was illegal, as the municipality had no course open to them but to continue the assessment already made for the quinquennial period which had then commenced under S. 97 (a) or 102 of the Bengal Municipal Act. 46 Cal. 784; 51 I. C. 993.

This section is not to be construed as to prevent the committee from adding to the list new names of persons not in the town at the beginning of the year when the list is required to be originally prepared.

Assessment valuation.—Some premises with structures on were amalgamated with vacant premises during the currency of an assessment. The corporation re-assessed the joint premises under S. 127 of Calcutta Municipal Act at a valuation higher than the total of the past separate valuation:

Held, that S. 127* could not come into operation in its entirety, in making a re-valuation on amalgamation, and in fixing the annual value of amalgamated premises, so as to control the provisions contained in Ss. 131† and 134†, during the currency of the assessment that was in force at the time of amalgamation. The total area of land comprised in the amalgamated premises could not be revalued on residential basis, under S. 127, on amalgamation, as the valuation made for the purposes of assessment was to remain in force for the whole of sexennial period, and the only addition that could be made was the amount that represented the annual value of the structures added to those standing on the premises before amalgamation. *Cf.* 1933 Cal. 128; 141 I. C. 32.

**Cf.* Section 67 of Punjab Act.

†*Cf.* Section 68 of Punjab Act.

New list
need not be
prepared
every year.

68. It shall be in the discretion of the committee to prepare for the whole or any part of the municipality a new assessment list every year, or to adopt the valuation and assessment contained in the list for any year, with such alterations as may in particular cases be deemed necessary, as the valuation and assessment for the year following, giving to persons affected by such alterations the same notice of the valuation and assessment as if a new assessment list had been prepared.

Notes.

S. 61 of the old Act. The words between "prepare" and "a new" have been added by Amendment Act, II of 1923.

Analogous Law:—

S. 88, Bengal District Municipal Act, 1884.
Ss. 90, 106, Behar and Orissa Municipal Act, 1922.
S. 84, Bombay Municipal Boroughs Act, 1925.
S. 67, Bombay District Municipal Act, III of 1901.
S. 168, Bombay City Municipal

Act, III of 1888.
S. 67, Burma Municipal Act, III of 1898.
S. 147, Calcutta City Municipal Act, III of 1923.
S. 72 Cantonment Act, II of 1924.
S. 145, U. P. Municipalities Act, 1916.

Valuation—Means not the amount of the valuation merely but also the process or act of valuation. Where the valuation could only be revised after six years of the previous valuation and where revision was made within six years of the prior valuation, it was held to be illegal. 26 Cal. 74.

General provisions.

Tax not in-
valid for de-
fect of form

69. No assessment and no charge or demand of any tax made under the authority of this Act shall be impeached, or affected by reason of any mistake in the name, residence, place of business or occupation of any person liable to pay the tax, or in the description of any property or thing liable to the tax, or of any mistake in the amount of assessment or tax, or by reason of any clerical error or other defect of form; and it shall be enough if any such tax on property or any assessment of value for the purpose of any such tax if the property taxed or assessed is so described as to be generally known: and it shall not be necessary to name the owner or occupier thereof.

Notes.

S. 49 of the old Act.

Analogous Law:—

- | | |
|--|---|
| S. 358, Bengal District Municipal Act, 1884. | S. 104, Cantonment Act, II of 1924. |
| Ss. 150 & 537, Bengal Municipal Act, XV of 1932. | S. 401, Madras City Municipal Act, 1919. |
| S. 57, Bombay Municipal Boroughs Act, 1925. | S. 239, Rangoon City Municipal Act, 1922. |
| S. 525, Bombay City Municipal Act, III of 1888. | S. 165, U. P. Municipalities Act, 1916. |
| S. 66, Burma Municipal Act, III of 1898. | |

This section refers to errors or defects of forms. No assessment or demand of any tax shall be impeached on the ground of any defect of form. A notice of demand of house tax is not irregular merely because there has been an omission to fill up one column of the house register. Such omission may be cured by this section. *Cf.* 21 Mad. 296.

Similarly the mistake of a few rupees in a notice caused by an error in addition is not sufficient to impeach or affect the demand. 9 W. R. 562 Cr.

The mere defect in form in preparation of the assessment list would not invalidate an assessment. Every defect in assessment list prepared under S. 63 does not destroy the jurisdiction of the municipal committee and render the assessment *ultra vires*, and unless this is established a civil court has no jurisdiction. *Cf.* 64 I. C. 649; 26 C. W. N. 311; 1922 Cal. 46 (2).

Imposition of taxes.—Taxes must be imposed by a body of councillors duly constituted. Otherwise the ratepayer is not bound to pay. S. 69 cannot cure such defects. 1 I. C. 388.

The section, however, does not validate a tax which is not legally imposed or sanctioned.

See also 7 Mad 65. *See Notes under* S. 86.

70. (1) A committee may exempt, in whole or in part, for any period not exceeding one year, from the payment of any such tax, any person who by reason of poverty may in its opinion be unable to pay the same, and may renew such exemption as often as may be necessary.

Power:
Commit
in regard
taxes.

(2) A committee, by a resolution passed at a special meeting and confirmed by the local Government, may—

- (a) provide that all or any persons may be allowed to compound for taxes imposed *under sub-clauses (c), (d) and (e) of clause (1) and under clauses (2) and (3) of section 61.**

The words in italics were substituted by S. 4 of Punjab Amendment Act, I of 1925.

- (b) **abolish, suspend or reduce in amount any tax imposed under the foregoing sections; or**
- (c) **exempt in whole or in part from the payment of any such tax, any person or class of persons or any property or description of property.**

Notes.

S. 46 and 47 of the old Act. The power of suspension is new, clause (a) is also new.

Analogous Law:—

Ss. 91 & 98, Bengal District Municipal Act, 1884.	S. 170, Calcutta City Municipal Act, III of 1923.
Ss. 124, (3) 141 & 170, Bengal Municipal Act, XV of 1932.	Ss. 100 & 101, Cantonment Act, II of 1924
Ss. 93 & 97, Behar and Orissa Municipal Act, 1922.	Ss 66 (4), 68 & 69 Central Provinces M. Act, II of 1922
S. 60, Bombay Municipal Boroughs Act, 1925.	Ss 70 (2) (a) & 119, Madras City Municipal Act, 1919
S. 47, Bombay District Municipal Act, III of 1901.	Ss. 83 84, (2) & 111 (2), Madras District Municipal Act, V of 1920.
S. 143 (c) Bombay City Municipal Act, III of 1888.	Ss 89 & 90, Rangoon City Municipal Act, 1922.
Ss. 52 & 53, Burma Municipal Act, III of 1898.	Ss. 156 & 157, U. P. Municipalities Act, 1916.

Exemption.—The power to tax does not give the power to exempt. Unless specially exempted by statute, the burden of taxation must fall equally upon all persons and property within the corporate limits; and statutes exempting persons and property are construed with strictness; and the exemption should be denied to exist, unless it is so clearly granted as to be free from fair doubt. Such statutes will be construed most strongly against those claiming the exemption. Aiyangar's "Law of Corporations in British India."

Buildings used for charitable purposes.—It will be noticed by comparison of other provincial municipal Acts that buildings used for charitable purposes are exempt from payment of taxes. Such exemption can be effected by recourse to special resolution under this section, sub-section 2, clause (c). Where buildings used for charitable purposes are exempt, it has been held that the words charitable purposes have acquired a technical meaning and include all purposes within the meaning of Statute 43 Eliz. C. 4. Hence it was held that University buildings are exempt from taxation as buildings exclusively occupied for charitable purposes: 16 Bom. 217. Similarly school buildings are exempt. 21 Mad. 367.

A building used in whole or in part for purposes other than those of public worship is not exempt from taxation.

The feeding of Brahmans is not an act of public worship.
6 Mad. 287.

The fees paid by the resident students of a hostel attached to a college is not paid as rent and does not render the hostel as a building deriving rent.

The portions of a hostel occupied by the resident students of the college are charitable institutions as under the University Act each college which is admittedly a charitable institution is by law obliged to maintain a hostel as part of the general educational scheme of the country. Though the hostel cannot be considered as part of the college, its object is advancement of learning and such an object falls within the general objects which are charitable.

The portions occupied by the superintendent and professors will be equally exempt from payment of taxes if the presence of these occupants is absolutely necessary for the discharge of their duties of supervision and physical welfare of the students as required by the University Act. 47 I. C. 642; 43 Bom. 281.

Under S. 83, Madras Act V of 1920 as also under S. 63, of Madras Act IV of 1884, a school is exempt from property tax on the ground that it is a building used for educational purposes even though the proprietor of it makes profit out of the school which he carries on in that building. 1931 Mad. 55; 54 Mad. 495.

71. (1) The local Government may by order exempt in whole or in part from the payment of any such tax any person or class of persons or any property or description of property.

Powers
local Government in
regard to tax

(2) If at any time it appears to the local Government, on complaint made or otherwise, that any tax imposed under the foregoing section is unfair in its incidence or that the levy thereof or of any part thereof is injurious to the interests of the general public, it may require the committee to take within a specified period measures to remove the objection; and, if within that period the requirement is not complied with to the satisfaction of the local Government, the local Government may by notification suspend the levy of the tax or of such part thereof until the objection has been removed.

Notes.

S. 48 of old Act.

Analogous Law:—

S 111-A, Bengal District Municipal Act, 1884.
 S. 110, Behar and Orissa Municipal Act, 1922.
 S 102, Bombay Municipal Boroughs Act, 1925.
 S. 73, Bombay District Municipal

Act III of 1901.
 S. 54, Burma Municipal Act, III of 1898.
 S 99 A, Cantonment Act, II of 1924.
 S. 137, U.P. Municipalities Act, 1916.

By first clause the Government retains the power as are conferred on municipalities under sub-section (2) clause (c) of the preceding section.

remission
 on un-
 occupied im-
 movable
 property

72. (1) When any property assessed to a tax under sub-clause (a) of clause 1 of section 61 which is payable by the year or by instalments, has remained unoccupied and unproductive of rent throughout the year or the period in respect of which any instalment is payable, the committee shall remit the amount of the tax or of the instalment, as the case may be:

Provided that no such remission shall be granted unless notice in writing of the circumstances under which it is claimed has been given to the committee within the first month after the expiry of the period in respect of which it is so claimed.

(2) When any such property as aforesaid —

(a) has not been occupied or productive of rent for any period of not less than sixty consecutive days, or

(b) consists of separate tenements, one or more of which has or have not been occupied or productive of rent for any such period as aforesaid or

(c) is wholly or in greater part demolished or destroyed by fire or otherwise,

the committee may remit such portion (if any) of the tax or instalment as it may think equitable.

(3) The burden of proving the facts entitling any person to claim relief under this section shall lie upon him.

(4) For the purposes of this section neither the presence of a care-taker nor the mere retention in an otherwise unoccupied dwelling-house of the furniture habitually used in it shall constitute occupation of the house.

(5) For the purposes of this section a house shall be deemed to be productive of rent if let to a tenant who has a continuing right of occupation thereof, whether it is actually occupied by such tenant or not.

(6) The enquiry necessary for a decision whether any relief shall be granted under this section shall be held by the

executive officer who shall make such recommendation to the committee as he may deem proper : Provided that the committee shall not grant any remission of tax unless such remission is recommended by the executive officer.

Notes.

S. 62 of the old Act. In view of the amendment of S. 61 this section as it originally stood should have also been amended and the reference to old section should have been replaced by reference to new provisions. This was subsequently done by S. 5 of Amendment Act of 1925.

Analogous Law : —

Ss. 92 & 110, Bengal District Municipal Act, 1884.	S. 151, Calcutta City Municipal Act, III of 1923.
S. 142, Bengal Municipal Act, XV of 1932.	S. 76, Cantonment Act, of 1924.
Ss 83, 84, 94, 111, & 113 Behar and Orissa Municipal Act, 1922.	Ss 72 (1) & 105, Madras City Municipal Act, 1919.
S. 86, Bombay Municipal Boroughs Act, 1925.	Ss. 87 & 117, Madras District Municipal Act, V of 1920.
S. 69, Bombay District Municipal Act, III of 1901.	S. 88, Rangoon City Municipal Act, 1922.
S. 70, Burma Municipal Act, III of 1898.	S 15-L U.P. Municipalities Act, 1916.

Delegation.—Powers under S. 72 can be delegated in municipalities to which Executive Officers Act is not extended; *vide* S. 33 of Municipal Act.

Executive Officers Act.—In municipalities to which this Act has been extended clause (6) should be deemed to have been added. *Vide* clause 6 of the Schedule II of Punjab Act, II of 1931.

Vacancy and occupation.—The owner of a vacant house is in possession and may maintain trespass against any one who invades it; but so long as he leaves it vacant, he is not rateable for it as an occupier. If, however, he furnishes it and keeps it ready for habitation whenever he pleases to go to it he is an occupier though he may not reside in it a single day in the year. *Regina v. Pancras*, 2 Q. B. D. 531.

The owner of a cotton mill which through temporary scarcity of cotton was not kept at work, was held to be in rateable occupation, on the ground that he was using the mill as a warehouse for the machinery that was in it. *Staley v. Castleton*, 33 L. J. M. C. 178.

See Notes on 'Occupation' under S. 3 (1) and (10).

Sixty consecutive days.—Where profession tax was levied half-yearly and the condition for levy was that the person liable must have exercised the profession, art, trade, etc., for

sixty days reckoned consecutively or from time to time in such half-year; it was *held* that day means a duration of 24 hours and the period of sixty days means to be sixty entire and unbroken periods of 24 hours each. It will depend on circumstances whether fractions of a day are to be omitted or to be counted as whole days and the cause and character and duration of absence from municipal limits will determine whether particular days are to be reckoned or omitted. 29 Mad. 326.

Exemption of permanent lessee of committee.—A permanent lessee under a municipality is not as such exempted from payment of municipal rates. The case must be governed by the contract. If there is no provision in the lease for any exemption, the lessee must pay the rates which he is under a statutory obligation to pay. The burden is upon the lessee to establish an exemption from the statute. 13 I. C. 183 (2) = (1911) 2 M. W. N. 589.

Destruction and not unfit for use.—What the section refers to, is physical destruction of the building so that it is no longer a building but merely a heap of building materials. It is not necessary that no stone should be left standing on another, but in the ordinary and usual acceptation of such language it should cease to exist as a building and not merely as a building designed for particular purposes.

Where the building was one used as a theatre:

Held, that it was not destroyed within the meaning of the section merely because it was rendered unfit for use as theatre by the removal of the roof. 1921 Mad. 487; 44 Mad. 354; 40 Mad. L. J. 306.

In a suit filed by the municipality for house and latrine taxes when it is admitted that at the time of the suit the house is not in existence in that it was demolished by the defendant in pursuance of a notice under S. 194†, it is for the municipality to prove that it was in existence during the period for which the taxes have been claimed, and further in such a case no inference about the existence of the house can be drawn from the facts that demand register and assessment list show entries of taxes for the holding, when there is nothing to show that the defendant had any notice thereof.

A suit under S. 130* is governed by Art. 120, Limitation Act, there being no other limitation provided for in the other articles of the schedule. 1933 Pat. 65; 141 I. C. 792.

* Enabling recovery of taxes by suit.

† Behar and Orissa Municipal Act

Remission of future taxes.—Under the Municipal Act the commissioners have no power to remit payment of rates or taxes in future and any powers of remission exercised by them can only affect the demands that have fallen due at the date of such remission. 1931 Cal. 129; 34 C. W. N. 1013.

Liability of property in occupation of a watchman.—A watchman appointed by the owner on Rs. 25 per month is not a tenant of the house and therefore the house is not occupied and cannot be made liable for the property tax. 1929 Bom. 273; 119 I. C. 191.

Delegation of duty.—S. 72 throws a duty on the municipality to grant a refund and the municipality cannot escape that duty by any act of delegation; of course it is necessary to make enquiry in such matters and power to make enquiry can be delegated. But the municipality remains responsible for the due performance of their statutory duty. Cf. 1930 Sindh 93, 122 I. C. 398.

73. (1) Every person shall on the demand of an officer duly authorized by the committee in this behalf furnish such information as may be necessary in order to ascertain whether such person is liable to pay any municipal tax; and every hotel or lodging-housekeeper or secretary of a residential club shall also on demand made as aforesaid furnish a list of all persons residing in such hotel, lodging-house or club.

Duty of furnishing true information or regarding liability to Municipal taxation.

(2) If any person so called upon to furnish such information omits to do so or furnishes information which is untrue, he shall be punishable with fine which may extend to one hundred rupees.

Notes.

S. 55 of the old Act.

Instead of the committee demanding the information, any authorized person can demand the information under the new Act.

Analogous Law:—

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| Ss. 99 & 100, Bengal District Municipal Act, 1884. | Ss. 136, 162, 167 & 168, Calcutta City Municipal Act, III of 1923. |
| Ss. 102, 103 & 140, Behar and Orissa Municipal Act, 1922. | S. 103, Cantonment Act, II of 1924. |
| S. 61 (1), Bombay Municipal Boroughs Act, 1925. | Ss. 72 & 182, Central Provinces Municipal Act, II of 1922. |
| S. 48 (h) & (i) & 63(3), Bombay District Municipal Act, III of 1901. | Ss. 109, 115 & 120, Madras City Municipal Act, 1919. |
| Ss. 155 & 187, Bombay City Municipal Act, III of 1888. | Ss. 91, 96, 102 & 320, Madras Dist. Municipal Act, V of 1910. |
| S. 60 (3), Burma Municipal Act, III of 1898. | S. 158, U. P. Municipalities Act, 1916. |

Executive Officers Act.—The functions vesting in the committees under the section shall not vest in the committees but vest in the executive officers in municipalities to which the Executive Officers Act has been applied.

A false statement in answer to enquiry under this section will not make the offender liable to prosecution under the Penal Code. The Municipal Act is intended to be complete in itself as regards offences committed against the committee and there is no indication of any intention to render a delinquent also liable to punishment under the Penal Code. 22 Cal. 131.

Notice to be
given to the
committee of
transfers
title of
persons pri-
marily liable
payment of
property tax.

74. (1) Whenever the title to or over any building or land of any person primarily liable for the payment of property taxes on such property is transferred the transferor **[and transferee]* shall within three months of the registration of the deed of transfer if it be registered, or if it be not registered, within three months of its execution, or if no instrument be executed, of the actual transfer, give notice in writing of such transfer to the committee.

(2) Every person primarily liable for the payment of a tax on any property, who transfers his title to or over such property, without giving notice of such transfer to the committee, as aforesaid, shall, in addition to any other liability which he incurs through such neglect, continue liable for the payment of all such taxes from time to time payable in respect of the said property until he gives such notice, or until the transfer shall have been recorded in the committee's books.

(3) Whenever the title to or over any building or land has devolved upon any person by inheritance, the heir shall within three months of the date of the death of the former owner give notice in writing of such inheritance to the committee.

(4) But nothing in this section shall be held to diminish the liability of the transferee for the said taxes or to affect the prior claim of the committee for the recovery of the taxes due thereupon.

Notes.

This is a new provision.

This section has been amended by Amendment Act II of 1923. It has been made incumbent also on the transferees and the heirs to inform the committee of the transfer or devolution of title.

*Added by S. 19 of Act II of 1923.

Executive Officers Act.—Notice to be given or tendered to the committee shall not be given or tendered to the committee but shall be given or tendered to the executive officer in municipalities to which the Act has been extended. *Vide* S. 4 (b) of Act II of 1931.

Analogous Law :—

S. 144, Bengal Municipal Act, XV of 1932.	S. 145, Calcutta City Municipal Act, III of 1923.
S. 108, Behar and Orissa Municipal Act, 1922.	S. 73, Cantonment Act, II of 1924.
S. 87, Bombay Municipal Boroughs Act, 1925.	S. 106, Madras City Municipal Act, 1919.
Ss. 149 & 151, Bombay City Municipal Act, III of 1888.	S. 88, Madras District Municipal Act, V of 1920.

Liability of the transferee.—Under the provision of Madras Act, IV of 1884, it has been held that the tax imposed on houses is a yearly tax, although for the sake of convenience it may be made payable in instalments.

A person becoming the owner of a house subsequent to such assessment becomes liable as owner for the whole yearly tax and not only for the instalment that accrues due after his acquisition of ownership. It is not compulsory on the municipality to apportion the tax among several owners during the period and the provisions of the Transfer of Property Act regarding the obligations of buyer and seller in respect of payment of taxes do not apply as between the municipality and the subsequent owner. 30 Mad. 423.

Under S. 74 the purchaser is personally liable for the taxes due since his purchase but this personal liability cannot limit the charge on the property in his hand to the extent of arrears since his purchase. Under S. 80 the property is liable for all the arrears of taxes due whether from the present or prior owners. The personal liability can be enforced under S. 81. The liability of the premises for the arrears is a first charge on the property subject to any claim of His Majesty and such charge can be enforced as it were an arrear of land revenue assessed on the property as land.

Charge is not a transfer of interest in immovable property and such charge is not available against *bona fide* purchasers of such property without notice. 27 I. C. 261; 42 Cal. 625.

75. The committee may authorize any person—

- (a) after giving twenty-four hours' notice to the occupier, or, if there be no occupier, to the owner, of any building or land, at any time between sunrise and sunset, to enter, inspect and measure any building for the purpose of valuation;

Power entry for purposes valuation taxation.

(b) to enter and inspect any stable, coach-house or other place wherein there is reason to believe that there is any vehicle or animal liable to taxation under this Act or for which a license has not been duly taken out.

Notes.

S. 103 (b) and S. 109 of the old Act.

No provision is made for the case where the owner or occupier refuses entry or refuses to suffer inspection. A provision similar to S. 209 seems to be necessary. The act of the owner or occupier in preventing entry or inspection will amount to wilful obstruction and the owner or occupier may be proceeded against under S. 221 of the Act. Now under S. 19 every municipal servant or officer is a public servant and if the person authorized is a public servant under S. 19 of the Act the obstruction may also be punishable under S. 186, I. P. C.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officer in municipalities to which the Executive Officers Act has been extended.

Delegation—Powers under S. 75 can be delegated, *vide* S. 33 of this Act.

Analogous Law:—

S. 99, Bengal District Municipal Act, 1884.	Municipal Act, III of 1887.
Ss. 134 & 178, Bengal District Municipal Act, XV of 1932.	Ss. 136 & 172, Calcutta City Municipal Act, III of 1923.
S. 147, Behar and Orissa Municipal Act, 1922.	S. 157, Central Provinces Municipal Act, II of 1922.
S. 78 (3) Bombay Municipal Boroughs Act, 1925.	S. 109, Madras City Municipal Act, 1919.
S. 63 (2), Bombay District Municipal Act, III of 1902.	S. 91, Madras District Municipal Act, V of 1920
Ss. 155 & 189, Bombay City	S. 159, U. P. Municipalities Act, 1916.

Scope of section: Notice of entry disobedience.—There is nothing in the section which authorizes a committee issuing a notice under it to give any direction to the person to whom notice is given to do anything that it may require. The notice has to be simply an intimation to the occupier or owner of the building or land that the committee by its authorized person will enter for the purposes mentioned in the section at a specified hour on a specified day. If the occupier or owner does anything to prevent the entrance, he cannot be said to disobey the notice, but his act will amount to wrongful restraint or wilful obstruction, as the case may be. *Cf.* 6 Bom. L. R. 538.

76. Every person bringing or receiving, within the octroi or terminal tax limits of any municipality, any article on which octroi or terminal tax is payable, shall when required by an officer duly authorized by the committee in this behalf and so far as may be necessary for ascertaining the amount of tax chargeable,—

Powers to examine articles liable to octroi or terminal tax.

- (a) permit that officer to inspect, examine, weigh and otherwise deal with the article; and
- (b) communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature which he may possess relating to the article.

Notes.

Analogous Law.—S. 76 of Bombay Act, III of 1901. S. 94 (1) of Bombay Municipal Boroughs Act, 1925.

This and the following two sections have been amended by Amendment Acts of 1922 and 1923 to assimilate them to terminal tax.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officer in municipalities to which the Executive Officers Act has been extended. *Vide* S. 4 (b) of that Act.

77. (1) If any person bringing or receiving a conveyance or package within the octroi or terminal tax limits of a municipality on which octroi or terminal tax is or is believed to be leviable, shall refuse, on the demand of an officer authorized by the committee in this behalf, to permit the officer to inspect, weigh or otherwise examine the contents of the conveyance or package for the purpose of ascertaining whether it contains any articles in respect of which octroi or terminal tax is payable, or shall refuse to communicate to that officer any information and exhibit to him any bill, invoice or document of a like nature which he may possess relating to the article, or with the intention of defrauding the committee or a lessee under Section 83 shall communicate any such information which is false or exhibit any such bill, invoice or document of a like nature which is false, forged or fraudulent, he shall be punishable with a fine which may extend to fifty rupees;

Power to search where octroi or terminal tax is leviable.

(2) Any such person may demand that the conveyance or package or both, as the case may be, shall be taken without unnecessary delay before a member of the committee or the secretary Executive officer or a magistrate who shall cause the inspection to be made in his presence.

Notes.

S. 66 of the old Act with important changes. The refusal to show invoice, etc., or furnishing false information and exhibiting false invoices, etc., have been brought within the section. Such refusal, etc., has been made punishable, while the accused is enabled to demand an immediate inspection in presence of the magistrate, or other persons.

The section has been amended by Act I of 1922 and by Act II of 1923 to meet cases of terminal tax.

Analogous Law.—S. 76 (2) of Bombay Act, III of 1901, and S. 94 (2) of Bombay Municipal Boroughs Act, 1925.

Executive Officers Act.—In municipalities to which this Act is extended the words in italics over the words “executive officer” should be deemed to have been omitted, *vide* clause 7, Schedule II of Executive Officers Act, 1931.

Powers under this section shall not be exercised by committee but may be exercised by executive officer in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under S. 77 can be delegated, *vide* S. 33 of this Act.

Distinction between Sections 76 and 77.—S. 76 refers to articles which are mentioned in the octroi schedule. This section will apply when the article on which the octroi is leviable is before the octroi staff and they know that duty is leviable but do not know its weight or other particulars to enable them to assess the octroi or terminal tax correctly. S. 77 deals with cases where the articles on which duty is to be levied are contained in a package or conveyance and octroi staff has to do two things: (1) to see if the contents of the package or conveyance contain any article on which octroi or terminal tax is payable and (2) to assess the duty on such articles contained in the package or conveyance as are liable to duty.

S. 76 provides no penalty for the person refusing to permit inspection, etc., or refusing to communicate the required information or to exhibit bill, etc. Such a person may be liable under S. 221 to prosecution for obstruction; under S. 82 the article can be seized.

Inspection of account books—The terms of Ss. 76 and 77 do not permit a municipal officer to claim inspection of the private account books of the merchants. 28 I. C. 480.

78. If animals or articles passing the octroi or terminal tax boundary of a municipality are liable to the payment of octroi or terminal tax then every person who, with the intention

penalty for
violation of
octroi or ter-
minal tax.

to defraud the committee or a lessee under section 83 causes or abets the introduction of, or himself introduces or attempts to introduce within the said octroi or terminal tax boundary, any such animals or articles upon which payment of the octroi or terminal tax due on such introduction has neither been made nor tendered shall be punishable with fine which may extend either to ten times the value of such octroi or terminal tax or to fifty rupees, whichever may be greater.

Notes.

S. 70 of the old Act.

The section has been amended by Acts I of 1922 and II of 1923. Clause (2) has been omitted.

Analogous Law.—S. 77 (2) of Bombay Act III of 1901; S. 96 of Bombay Municipal Boroughs Act, 1925; S. 155 of U. P. Act II of 1916; S. 82 of Cantonment Act, 1924.

Goods in transit.—Goods merely passing through a municipality in the course of transit to another town are imported within the octroi limits and are liable to octroi duty; when goods pass out of the boundaries refund could be claimed. 22 Bom. 843.

These are also liable to octroi under the rules which have the force of law and the importer can claim refund under Account Code Rules. 1926 Bom. 231; 50 Bom. 174.

Importer liable whether owner or not.—The person liable under the section need not be the actual owner of the goods. It is the person who introduces the goods into the limits without payment of octroi duty. A broker of a consignee taking delivery of goods and bringing them within octroi limits will be liable. 46 I. C. 848; 16 A. L. J. 632.

When the owner of goods is shown to have authorized or connived at the introduction of goods he is liable for the acts of his servants. 1926 Bom. 231; I. L. R. 50 Bom. 174.

Passing of goods at octroi post under false description; power to impose tax.—Where an accused passed or attempted to pass an octroi post, goods described by him as linseed and iron bolts which were really turpentine and tobacco respectively, he was held to have committed an offence of attempt at cheating under Ss. 417—511, I. P. C.

The sanction of local Government for the imposition of taxes would be sufficient and the Court cannot require proof of executive or administrative orders of the Governor-General in Council or Government. P. L. R. 1900, p. 38 Cr.

Intention to defraud the municipality.—Where a person deprives a committee of the temporary use of the money which would have remained in deposit for a short time and will have to be refunded he is attempting to defraud the committee, though the word 'defraud' in the Penal Code is used in a very strict sense of depriving one of right either by obtaining something by deception or by taking something wrongfully without knowledge or consent of the owner but the popular sense of the word in which the word must be taken to have been used in the Act is to withhold wrongfully from the other what is due to him or to wrongfully prevent one from detaining what he may justly claim. *Cf.* 50 Bom. 174; 1926 Bom. 231; 98 I. C. 407.

To constitute an offence under S. 78 there should be an attempt to introduce dutiable articles into octroi limits with intent to defraud the committee. This is the offence generally known as smuggling. Where there is no evidence to show that the accused did anything of the kind, he cannot be convicted under S. 78 which does not apply to a refusal to pay taxes on the ground that they are not due. In this case the accused imported tins of petrol on which duty was not usually charged. The committee subsequently demanded the payment of duty which the accused refused. 1931 Lah. 752; 32 P. L. R. 688, 133 I. C. 866.

Punishment.—The amount of fine will be in the discretion of the magistrate within the limits laid down. In a case under S. 155, United Provinces Municipalities Act, 1916, (corresponding to Punjab Municipal Act, S. 78) where the section requires the fine to be in no case less than twice the octroi duty, it was *held* that the magistrate had no discretion in the matter. 51 I. C. 477.

Note—The United Provinces Act makes non-payment an offence even if there was no fraud or dishonesty.

What is evasion.—The accused, the consignee of goods sent by railway, submitted the railway receipt to a municipal octroi office and paid duty on the weight specified therein. It was subsequently found by the Railway authorities that the weightment was wrong and less than the real weight and the accused offered to pay the excess duty: *Held* in a prosecution by the municipality for an offence under S. 45 of Act XV of 1873 (evasion of octroi duty) that underpayment would be an evasion only if the accused knew the weightment in the railway receipt to be wrong, but that in the absence of proof of such knowledge no evasion or abetment of evasion was committed. 2 A. W. N. 231.

Weightment entries in shipping bills.—A person who imports timber by sea into a municipal district is not bound

by the entries in shipping bills as to its weight and measurement for the purpose of calculating the duty payable. He may dispute them and is entitled to demand a fresh weighing but if he does not do so and fails to prove their incorrectness he is bound by the entries. (1891) Ratan Lal Un. Cr. C. 541.

Parts of machinery. Where machinery and its component parts are exempt from payment of octroi the import of certain parts of motor car will be exempt from payment. Persons subjected to taxation are entitled to exemption under any head under which such exemption can be claimed. Though parts of motor car are not exempt as such but exemption can be claimed on the ground that they are component parts of machinery. 1929 All. 278; 115 I. C. 452.

Octroi on Motor Car.—A notification under the provisions of Chap. X stated that “octroi shall ordinarily be levied on commodities included in the following classes and specified in the schedule hereto annexed at rates therein entered and then set out classes, the 8th class being “metals and their manufactures” and the schedule specified “iron, zinc, lead, tin, copper, brass and their alloys and manufactured articles of the same.” The question was whether the notification authorised the levy of octroi on motor cars:

Held, (1) that the octroi was authorised only on commodities which were both included in a class and specified in the schedule.

(2) That the reference to manufactures did not intend to tax complicated machinery constructed mainly of metals specified.

(3) That even if there was such an intention the notification should be construed strictly and no octroi could be levied on motor cars or other complicated machinery unless there was a clear obligation in the notification to pay octroi on them. 1931 Nag. 156; 134 I. C. 850.

Interpretation of Statutes.—Statutes imposing taxation so also statutes imposing pecuniary burdens must be strictly construed. The subject should not be taxed unless the language of the statute clearly imposes the obligation and in case of reasonable doubt the construction most beneficial to the subject is to be adopted. 1931 Nag. 156.

Motor cars taxable as carriages or articles made of metal.—Where a Government notification made “all metals wrought and unwrought and articles wholly or partially made of metals hardware and cutlery” and “all carriages, carts,

tricycles, bicycles, perambulators, trucks, wheel-barrows" liable to octroi duties:

Held, that a motor car came within the words of the notification under both the heads and was taxable. The term carriage is wide enough to include a car. 13 Lah. 53; 1931 Lah. 572, 132 I. C. 694.

Municipal Account Code—Contractors importing goods in fulfilment of Government contracts—Refund.—Where the contractors claimed refund of octroi on goods imported in fulfilment of a Government contract and where the committee disallowed the claim on the ground that the identity of goods actually supplied to Government with the goods imported was not established, it was *held* that the rule implied that the goods that are imported should become the property of the Government in order that a refund of the octroi duty may be obtained. The question of identity has to be solved not by the municipal board or its officers but by the departmental officers concerned who has to certify as to the identity. The above rule is based upon public policy and is intended to save the State from the incidents of taxation and to extend the protection to private individual who fulfils his engagement with the State. 25 A. L. J. 1038, 1928 All. 136; 108 I. C. 454.

Breach of Octroi Rules.—Failure to pay duty assessed by Octroi Superintendent is punishable. 43 I. C. 446, 40 All. 105.

Refund of octroi levied on goods imported on transit pass and not exported within time fixed under rules.—A merchant who takes advantage of transit pass rules cannot complain if he is exposed to certain restrictions and obstructions in case he does not comply with the terms of transit pass. Where octroi was exacted from a merchant importing goods on transit pass and he claimed a refund after the goods had been exported but the claim was not made within the time fixed under the rules, the claim was disallowed. 1924 Sindh 149, 78 I. C. 432.

extension of
taxation
limits by
agreements.

78-A. (1) When a committee, with the sanction of the local Government has agreed with a Cantonment Authority or the Committee of an adjoining Small Town or an area notified under section 241 that in consideration of the payment of a lump sum or otherwise the same limits for octroi or terminal tax or any toll or tax shall be established for the contracting parties the committee may fix limits under section 188 so as to include so much of the area controlled by the said contracting parties as it may deem necessary, and shall have the powers of collecting such toll or tax or octroi or terminal tax on animals or

articles brought within such limits, and the provisions of this Act for the assessment and collection of such tax or toll or octroi or terminal tax shall apply in the same way as if the said limits were wholly comprised in the area of the municipality.

(2) The total of the proceeds of such taxes or tolls made in the joint area of the municipality and cantonment or small town or notified area and the cost thereby incurred shall be apportioned between the municipal fund and the fund subject to the control of the Cantonment Authority or the Committee of the Small Town or notified area in such proportion as shall have been determined by the agreement.

Notes.

Analogous Law.—Ss. 47 (b) & 100, Bombay Municipal Boroughs Act, 1925; Ss. 39 (b) & 81 of Bombay District Municipal Act, 1901; S. 82, Central Provinces Municipalities Act, II of 1922.

The section as it originally stood was introduced by Amendment Act II of 1923, the present section has been substituted by S. 31 of the Punjab Amendment Act III of 1933. The new section enables notified areas also to be included in the contracting parties. Clause 2 is a new clause and provides for the apportionment of the tax collected and the costs incurred between the contracting parties in such proportion as may have been determined by the agreement.

78-B. When terminal tax is leviable on animals or articles conveyed out of the terminal tax limits the provisions of Sections 76, 77, 78, and 78-A shall be deemed, so far as may be, to apply in respect of the animals or articles so conveyed.

Taxation
on article
is posted

Notes.

Ss. 78-A and 78-B were introduced by the Amendment Act II of 1923.

79. Subject to the provisions of sections 62 (7) and (8) and 66, any tax imposed under this chapter and payable periodically shall be payable on such dates and in such instalments (if any) as the committee, with the previous sanction of the Deputy Commissioner, may from time to time direct.

Taxes wt
payable.

Notes.

S. 50 of the old Act.

S. 62 has since been amended by Punjab Municipal Amendment Act III of 1933, the references to sub-clauses of

the amended Act should have been made—sub-clauses 7 and 8 now correspond to sub-clauses 10 and 11 of the new S. 62 and under General Clauses Act, 1898 S. 6, the references must be taken to have been made to clauses 10 and 11 of S. 62.

Analogous Law:—

Ss. 87, 103 and 118, Bengal District Municipal Act, 1884.	S. 197, Bombay City Municipal Act, III of 1888.
S. 153, Bengal Municipal Act, XV of 1932.	S. 58, Burma Municipal Act, III of 1898.
S. 121, Behar and Orissa Municipal Act, 1922.	Ss. 148 and 149, Calcutta City Municipal Act, III of 1923.
S. 77 (a), Bombay Municipal Boroughs Act, 1925.	S. 89, Cantonment Act, II of 1924.
S. 62 (a) (i), Bombay District Municipal Act, III of 1901.	S. 86, Madras District Municipal Act, V of 1920.

Recovery
of taxes
payable by
owners.

80. (1) When any sum is due on account of a tax payable under this Act in respect of any property by the owner thereof, the committee shall cause a bill for the amount, stating the property and the period for which the charge is made, to be delivered to the person liable to pay the same.

(2) If the bill be not paid within ten days from the delivery thereof, the committee may cause a notice of demand to be served on the person liable to pay the same and, if he do not, within seven days from the service of the notice, pay the sum due, with any fee leviable for the notice, or show sufficient cause for non-payment, the sum due, with the fee, shall be deemed to be an arrear of tax.

(3) The amount of every such arrear, besides being recoverable in any other manner provided by this Act, shall, subject to any claim on behalf of His Majesty, be a first charge on the property in respect of which it is payable, and shall be recoverable, on application made in this behalf by the committee to the Collector, as if the property were an estate assessed to land revenue and the arrear were an arrear of such revenue due thereon:

Provided that nothing in this sub-section shall authorise the arrest of a defaulter.

(4) If any tax or sum leviable under this Act from the owner is recovered from the occupier, such occupier shall, in the absence of any contract to the contrary, be entitled to recover the same from the owner and may deduct the same from the rent then or thereafter due by him to the owner.

Notes.

S. 64 of the old Act. Clause (4) is new, and has been taken from S. 437, Madras City Municipal Act of 1904.

Ss. 73 to 83 lay down the procedure to be adopted by municipal committees in collecting various taxes which can be imposed under S. 61. Ss. 76 to 78 and 82 are specific provisions for the collection of octroi or terminal taxes. Ss. 74 and 75 deal with taxes on lands and buildings. S. 80 is a general provision for recovery of taxes on property.

Executive Officers Act. Powers conferred and duties imposed under this section shall not be exercised and performed by committees but may be exercised and performed by executive officer in municipalities to which the Executive Officers Act has been extended.

Analogous Law:—

Ss. 120, 122 & 125, Bengal District Municipal Act, 1884.	City Municipal Act, III of 1923.
Ss. 117, 155 & 165, Bengal Municipal Act, XV of 1932	Ss. 65 (3), 80 & 91, Cantonment Act II of 1924.
Ss. 123 & 134, Behar and Orissa Municipal Act, 1922.	Ss. 78, 79, 81 & 225 Central Provinces Municipal Act, II of 1922.
Ss. 104, & 112, Bombay Municipal Boroughs Act, 1925.	Ss. 80 (3), 80 (4), 103 (3), 375 (4) & 387, Madras City Municipal Act, 1919
Ss. 82 & 87, Bombay District Municipal Act, III of 1901.	Ss. 85(3) & 332(4), Madras District Municipal Act, V of 1920.
Ss. 200, 202, 209, (4) & 212 Bombay City Municipal Act, III of 1888.	Ss. 149, 166 & 177, U. P. Municipalities Act, 1916.
S. 69, Burma Municipal Act, III of 1898.	S. 70, Punjab District Board Act, 1898
Ss. 189, 190, 191 & 205, Calcutta	

Mode of collection of taxes and assessments.—Taxes are imposts levied for the support of the Government or for some special public purpose authorized by it, and are not debts in the ordinary acceptance of the term. The fact that the tax is not a debt has an important influence upon the remedies for the collection thereof. If the statute or charter gives to a municipal corporation a specific and complete remedy for the collection of taxes, as by a distress and a sale of property, or by making them a lien upon real estate and providing for the sale thereof in default of payment, this will ordinarily be regarded as excluding by implication the right to resort to any other mode of enforcing a tax, and an action against the tax-payer to recover a personal judgment as for a debt will not lie. But where the power to tax is plainly given, a right to collect by suits or action should not be taken as impliedly denied unless another reasonably adequate means

of collection is provided, and the intention of the legislature that the special mode prescribed should be the *only* mode, appears with a reasonable certainty. If the specific remedy is full and adequate, such an intent on the part of the law-maker would be more readily deduced than it would under other circumstances. See "Aiyangar's Law of Municipal Corporations," p. 379.

Where the charter is silent as to mode of collection: suit may be brought.—If the charter gives the power to impose taxes, but is silent respecting the method for their recovery it has been held that the corporation may enforce them, or provide by ordinance for their enforcement by due course of judicial proceedings. In such a case the authority to collect by suit is clearly implied, being necessary in order to make the power to tax available. The well-known rule is, that where a statute creates a right and gives no remedy, the party may resort to the usual remedy applicable to such a case. But the power to levy and collect a tax, whether general or special, does not carry with it the authority to collect by *distress or sale of property*, or in any way more summary than by resort to legal proceedings. Dillon, Vol. IV, p. 2484.

Bill of demand — Under the rules prevailing in Ahmedabad Municipality, water-tax is payable in advance and accrues on 1st April and the municipality demanded water-tax for 1923-24 from defendants as their mills came within the taxable limits of the water-supply system. Defendants pleaded that the bill is defective in law and the bill submitted was inaccurate in amount. Defendants further objected that as the amount was payable in advance on 1st April and therefore the mills were not liable for the period before 1st April following the date when the tax first became due. Thirdly, it was contended that the portion of the mills was outside the fixed radius under the rules. It was *held*: That the section does not expressly say that all the liabilities including ultimate liability incurred in default of payment are to be specified in a bill of water-tax; on the ordinary canons of interpretation it is correct to hold that the municipality sufficiently complies with the law by stating in the bill the next step to which they would have recourse, *viz.*, a notice of demand.

The construction, that the water-tax and the house and the property tax are not leviable except on 1st April is untenable for two reasons: firstly, it is inconsistent with the words "in advance," secondly, because, it is difficult to imagine that the municipality merely because the house was completed on

the 2nd April, or the exemption of a building ceased at any date after 1st April, would forego their entire tax payable annually in advance.

By 31st May 1923 the municipal pipes were brought within 75 feet of the mills' buildings belonging to the plaintiff company, and there were two stand pipes within 500 feet. The plaintiff company filed a suit for a declaration that they were not amenable to water-tax contending that under Rule 3, they were not liable to pay the tax for any period prior to 1st April 1924: *Held*, that the company was liable to pay the water-tax from 1st June, 1923.

In view of Rule 6, not merely the actual physical buildings within 75 feet of a water-pipe or 500 feet of the stand-pipe, as the case may be, are liable for assessment but if any appreciable portion of a mill building falls within these radii, the whole building of the mills becomes liable. 1930 Bom. 145; 54 Bom. 80; 122 I. C. 430.

Recoverable in any other manner.—S. 81 shows the manner in which arrears of taxes may also be recovered.

Recoverable as an arrear of land revenue.—For the procedure relating to the recovery of land revenue *see* Chapter VI of Punjab Land-Revenue Act, 1887.

Under this section first a bill is sent and if the bill is not paid within 10 days or cause is not shown for its non-payment, then the amount due becomes an arrear of tax. This arrear is a charge on the property and can be recovered as arrears of land revenue. It can also be recovered under S. 81.

S. 80 (3). Charge on property. Doctrine of *lis pendens*.—A mortgagee who had given no notice of his mortgage to the municipal corporation filed a suit on his mortgage. In the meanwhile the property was sold under the Land Revenue Act by the corporation after due notice to the mortgagor for non-payment of property taxes. Mortgagee joined the auction purchaser as defendant: *Held* that the property was sold free from the mortgage because the tax in respect of which the default was made was the property tax and the corporation was entitled to put into force the summary method given in the Land Revenue Act against the immovable property itself which was quite independent of any remedy against the defaulter personally; *Held* also that the doctrine of *lis pendens* does not apply to this case at all as it would indeed be a dangerous extension of the doctrine to hold that neither Government

nor a local body could recover its taxes or rates from a defaulter so long as a law suit was pending between a defaulter and some of his other creditors. 1929 Rang. 175, 117 I. C. 575.

When the Act does not make the arrears a charge on the property, the rights of the mortgagee will not be affected. 39 I. C. 387; 21 C. W. N. 425.

Hindu female liable for tax on property without reference to personal law.—The arrears of rates and taxes which have become due in a Hindu widow's lifetime while she had a life estate still form a first charge on the properties inherited by the daughter not as an heiress of her widowed mother, but as a reversioner of her father. The statutory charge is intended as a security to the public authority for the payment of rates and should be given wide interpretation to secure the end in view. The Act is not concerned with the personal law of the rate-payers and does not make any distinction between the various classes of people from whom rates and taxes may be found due in respect of properties in Calcutta.

The Calcutta Municipal Act does not make any distinction between the various classes of persons from whom rates and taxes may be found to be due in respect of properties in Calcutta. The Act is not concerned with the personal laws of the rate-payers and the whole machinery of the Calcutta Municipal Act will be thrown out of gear if it were held that in the events which have happened a person such as Rajlakshi who is in possession of the properties and who is in enjoyment of the amenities provided for under the Calcutta Municipal Act, should continue to enjoy the rents, issues and profits of the said properties without being liable to pay the arrears of rates and taxes in respect of such properties. Cf. 1931 Cal. 557; 133 I. C. 699.

Mistakes in bills.—If by mistake less than due is demanded and paid, there can be a fresh demand: *R. V. Blenkinsop* (1892), 1 Q. B. 43. It has been held that omission to serve the bill or issue notices of demand is merely an irregularity. 31 Cal. 452.

Limitation for recovery of house or water-tax.—As the taxes recoverable under S. 80 create a charge on the property in respect of which they are payable, the suit for recovery of such a tax shall be governed by § 132 of the Limitation Act. Cf. 1930 All. 530; 123 I. C. 370.

81. (1) Any arrears of any tax, water rate rent, fee or any other money claimable by a committee under this Act may

be recovered on application to a magistrate having jurisdiction within the limits of the municipality, or in any other place where the person from whom the money is claimable may for the time being be resident, by the distress and sale of any movable property within the limits of his jurisdiction belonging to such person. * [The costs of such proceedings shall be recoverable from the defaulter in the same manner as the said arrears.]

(2) * [An application made under sub-section (1) shall be in writing and shall be signed by the *President, Vice-President or Executive the Secretary* of the committee, but it shall not be necessary to *officer* present it in person.]

Notes.

S. 201 of the old Act. The recovery of water rate is brought within the section. The section has further been amended by Act II of 1923.

So far as the recoveries of arrears of taxes are concerned the person from whom the demand is made has a remedy provided for in S. 84. But the person against whom application for recoveries of other moneys, rent and fees claimable under the Act is made, seems to have no remedy under the Act against excessive demands. According to the rulings it would appear that the magistrate has no power to go into the question whether the amount claimed is due or not.

Recent changes.—The word “rent” has been substituted for the word “or” between “water rate” and “fee.” Thus “rent” has also been made recoverable by summary process. For definition of “rent” see Transfer of Property Act, S. 105.

Rent.—Rent claimable under S. 81 is the rent claimable under the Act, *e. g.*, under bye-laws made under S. 188 (u).

It is questionable whether the word “rent” will cover cases where rent is claimed on the basis of ordinary lease between a landlord or tenant. It cannot be the intention of the legislature to permit recovery of rent due under a lease by summary remedy and thus shut out all defences open to a tenant disputing either the amount or his liability.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officer in municipalities to which the Executive Officers Act has been extended.

* Inserted by S. 24 of Punjab Act, II of 1923 except the words under the line.

In municipalities to which this Act is applicable the words "Executive Officer" are to be deemed to be substituted for the words in *italics*.

Analogous Law:—

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| Ss. 121, 127 & 360, Bengal District Municipal Act, 1884. | City Municipal Act, III of 1923. |
| Ss. 156 & 524, Bengal Municipal Act, XV of 1932. | S. 92, Cantonment Act, II of 1924. |
| Ss. 124, 128 & 368, Behar and Orissa Municipal Act, 1922. | Ss. 77 & 226, Central Provinces Municipal Act, II of 1922. |
| S. 105, Bombay Municipal Boroughs Act, 1925. | S. 339, Madras City Municipal Act, 1919. |
| Ss. 83 & 161 (2), Bombay District Municipal Act, III of 1901. | S. 344, Madras District Municipal Act, V of 1920. |
| S. 203, Bombay City Municipal Act, III of 1888. | S. 194, Rangoon City Municipal Act, 1922. |
| S. 206, Burma Municipal Act, III of 1898. | Ss. 169 & 173, U P Municipalities Act, 1916. |
| Ss. 19, 201, 210 & 526, Calcutta | S. 58-B, Punjab District Board Act, 1883. |

Limitation for such applications.—The Limitation Act applies to suits only while applications under Civil Procedure Code only are governed by Limitation Act—applications for which no period is prescribed in the Schedule are governed by S. 182 and have to be made within three years.

As applications under S. 81 are neither applications under Civil Procedure Code nor can they be regarded as suits, there is no limitation apparently for such applications and no wonder that applications for arrears a suit for recovery of which would be time-barred are entertained by magistrates who do not seem to possess any power of rejecting claims of municipalities. Such applications cannot be rejected on the ground of limitation though magistrates may in the ends of justice refuse to entertain applications for such stale claims of committees. Applications for arrears of taxes as old as 10 to 12 years have often been made and the respondents, especially illiterate people who cannot be expected to prove payment and to preserve receipts for such payments find it very difficult to resist such claims.

Recovery of taxes by distress.—Distrainment of movable property to satisfy taxes lawfully levied is one of the most ancient methods of collection known to the law. The right of distress for rates and taxes is purely statutory and the provisions of statute must be strictly complied with. No previous notice of the distraining officers' intention to enter the house for the purpose of making the distress is required. Movable property will include money as well as goods.

The function of the magistrate under the section.—When an application is made by a municipal committee under S. 81

of this Act for recovery of any arrears of any tax, etc., the magistrate, if the point is raised, must satisfy himself that the committee applying to him is legally constituted and that the amount claimed is "claimable" as a tax or assessment legally imposed by the committee, *i. e.*, whether the claim is *intra vires* or *ultra vires*, although the magistrate is not competent to enquire whether the amount claimed under a tax duly and legally imposed and said to be in arrears is due or not, the remedy as to that lies under S. 84 of the said Act. P. R. No. 2 of 1910, Cr. ; 4 I. C. 951 and P. R. No. 1 of 1891 Cr. This remedy is only confined to taxes but not to other moneys claimable under the Act.

The action of the magistrate is only ministerial. The magistrate has no jurisdiction to enquire whether arrears for which a warrant is asked are really due or not. 22 All. 111 (*Disting.* 17 Bom. 731).

In the proceedings for the recovery of a tax under a corresponding section of the Bombay District Municipal Act it was held that the magistrate has jurisdiction to determine whether the amount claimed is correct and to enquire into all the conditions on which the rate of tax fixed is based. It is nowhere laid down that the statement of the amount by the municipality should be accepted as final. 1891, Rat. Un. Cr. C. 559 (*Disting.* in 23 Bom. 446).

Proceedings before a magistrate under S. 84 of Bombay Act VI of 1873 are criminal prosecutions, such prosecutions must be conducted according to the procedure applicable to summary trials prescribed in Ch. XXII of Cr. P. Code. The magistrate is bound, therefore, before sentencing a defaulter to pay a rate, to satisfy himself as to the extent of his legal liability. 17 Bom. 731.

Where an application is made for the recovery of the house tax claimed according to the letting value, assessed by the committee, the magistrate has to accept as conclusive the amount found by the committee to be the letting value of the house and to hold the legal liability of the accused to pay the tax based on this amount to be proved. The magistrate has no power to review the decision of the committee and to reverse it on fresh evidence taken before himself. 23 Bom. 446.

In 17 Bom. 731, the legal liability depended on the possession of a *khal kundi* and a tub, there was no provision for the determination of that point by the municipality; under the circumstances the magistrate was held empowered to determine the point.

Where a committee moves a magistrate under S. 81 to recover a penalty imposed for encroachment the defaulter

cannot ventilate before the magistrate his claim that there was no encroachment at all, and plead such defence to the case. *Cf.* 1925 Mad. 1015, 91 I. C. 529.

It is open to a party appearing before a magistrate under S. 81 to allege and prove that the fee claimed is not due from him under or by virtue of the Act.

Fees are not legally leviable for the standing of an omnibus on a stand provided by the committee for that purpose. 1929 Mad. 600 ; 52 Mad. 714.

Under S. 221 of Madras Local Board Act penalties imposed by local board for encroachment, are recoverable by application to magistrate.

The magistrate, to whom a case is referred under S. 221 (corresponding to S. 81 of the Punjab Act) for recovering a fine imposed for alleged encroachment has power to go into the question whether the alleged encroachment was true and therefore justified the imposition of the fine. 1930 Mad. 766.

Note.—This case was decided on the peculiar provisions of S. 221 which allowed the magistrate to determine the amount in case of dispute. *See contra* 1925 Mad. 1015, 91 I. C. 529.

The magistrate has no jurisdiction to enquire into the basis of assessment or to vary the amount claimed by the committee. 1928 Mad. 495.

In case of a dispute as to arithmetical calculations would the magistrate be competent to decide whether the amount claimed is correct or not? 1928 Mad. 495, 108 I. C. 414.

Claimable. —The word is not equivalent to “due” P. R. 2 of 1910 Cr.

Arrears of tax, etc. — Claims for arrears of rent which are not for any arrears of tax, fee or for money claimable under the Act cannot be realized through the agency provided by this section. 3 I. C. 638.

Money due on a contract of municipal sewerage does not come within the scope of this section and as such is not recoverable under this section. P. R. 23 of 1903 Cr *See* 26 Mad. 470, 30 I. C. 750.

Money due under contract is not recoverable under this section. 1924 Mad. 898 (2), 84 I. C. 325.

Amount due under a contract for lease of the tolls due to a local board is not recoverable summarily. 47 Mad. 381; 77 I. C. 240; 1924 Mad. 669 and 1931 Lah. 315.

The sums due from the purchaser for the money due under the auction selling the right to levy toll and standing reeds the sums cannot properly be said to be due under the Act. They are due on contracts and should properly form the subject matter of ordinary civil suits. 1928 Lah. 109, 110 I. C. 811.

Money due under a lease is not a sum claimable under S. 81. 1926 Lah. 518; 7 Lah. 568.

Recovery of license fee.—Where a person erected a *pandal* without the permission of the board and no license was applied for or granted before the *pandal* was erected, the Board however, instead of taking action for erecting the *pandal* without license took a lenient view of his act and agreed to give license to the *pandal* on payment of the fee. Default having been made the board moved the magistrate under S. 81: *Held*, that there having been no grant of a license the license fee payable under the Act cannot be said to be due within the meaning of S. 81. *Cf.* 1928 Mad. 682; 51 Mad. 866.

License fee not recoverable under Section 81 if license not granted.—Accused were carrying on trades which required licenses; they failed to get licenses and the committee failed to take steps in time to compel them to take licenses but sought to recover the fee for the license under S. 81: *Held* that the fees for licenses are not claimable unless the license has been granted. The grant of a license is *quid pro quo* for the fee. The committee cannot neglect its duty and profit by that neglect. *Cf.* 112 I. C. 591; 29 Cr. L. J. 1087.

License fees under S. 121 are only payable when licenses are granted. Where no license has ever been granted, nor has it been applied for, the attempt to levy these fees by the distress and sale of the movable property of the people, carrying on various trades, under S. 81 is illegal, the proper remedy being that provided in sub-s. 5, S. 121. 1933 Lah. 814, 144 I. C. 830.

Section 173 --Rent for temporary occupation.—Where municipal committee grants permission to a person for temporary occupation of a portion of a street for a temporary erection thereon, subject to a specified sum being paid annually and subject also to the condition that permission could be withdrawn at any time, the sum is a fee claimable under S. 173. 1931 Lah. 753, 32 P. L. R. 707, 133 I. C. 550.

Dues under Section 97.—Moneys which immediately accrue due by a person through the exercise of powers vested in the municipal committee under S. 97 are moneys due under the Act and can be recovered under S. 81 though there may

be a contract, *i.e.*, an express agreement to pay such dues, and hence the recovery cannot be refused as money due under a contract. 57 I. C. 718; 39 Mad. L. J. 58.

Revision.—Chief Court has power to revise an order passed by a magistrate granting or refusing an application of a committee under this section. P. R. 23 of 1903 Cr.; 52 I. C. 670; 1923 Mad. 275; 1928 Mad. 495.

Orders under S. 81 are open to revision where S. 81 is not applicable to the facts of the case. Money due on farm of tolls under S. 83 is not recoverable under S. 81. 1927 Lah. 161, 99 I. C. 1030.

Movable property.—Doors of a house cannot be attached as movable property. 11 Cal. 164; 13 Mad. 518; 14 Mad. 467.

Court-fee.—Such application would probably require a court-fee of rupee one under Court Fees Act, Schedule II, 1 (b).

Jurisdiction of Civil Court.—A civil court has jurisdiction to decide whether a certain amount in respect of which action under S. 81, Municipal Act is taken is an amount claimable by the committee under the Act. 1931 Lah. 315.

Limitation for suit for recovery of profession tax.—Assuming that debt lies on the statute, and that a proceeding under S. 62* of the Towns Improvement Act is not the only proper remedy, we think that the Limitation is not one year (Art. 6, Limitation Act), but six years (Art. 120). The suit is not for recovery of a penalty or forfeitures. The above observations render an answer to the second question unnecessary. 3 Mad. 124.

Recovery of
octroi termi-
nal tax and
tolls.

81-A. When a committee has made over to Government its water works for maintenance, any arrear of tax and water rate or both due to the committee under this Act, may be recovered by the Local Government on behalf of the committee as arrears of land revenue.

Notes.

This section has been introduced by S. 53 of the Punjab Amendment Act, III of 1933. Where water works have been handed over to Government for maintenance, the Government has been equally empowered to recover water tax or water rate as arrears of land revenue. See Notes under S. 80.

Recovery of
water tax and
water rate
is arrears of
and revenue

82. (1) In case of non-payment of any octroi or terminal tax or of any toll on demand, the officer empowered to collect the same may seize any article on which the octroi or terminal tax is chargeable, or any vehicle or animal on which the toll is

* Corresponds to S. 81 of the Punjab Municipal Act.

chargeable, or any part of its burden of sufficient value to satisfy the demand.

(2) The committee after the lapse of five days from the seizure, and after the issue of a proclamation fixing the time and place of sale, may cause any property so seized, or so much thereof as may be necessary, to be sold by auction to satisfy the demand, with the expenses occasioned by the seizure, custody and sale thereof, unless the demand and expenses are in the meantime paid:

Provided that, by order of the *President or a Vice-President,*
Executive officer,
articles of a perishable nature which could not be kept for five days without serious risk of damage may be sold after the lapse of such shorter time as he may, having regard to the nature of the articles, think proper.

Notes.

S. 68 of the old Act.

Ss. 82 and 83 have been amended by Act I of 1922 so as to make them applicable to terminal tax as well.

Analogous Law:—

S. 163, Bengal District Municipal Act, 1884.	pal Act, III of 1901.
S. 205, Bengal Municipal Act, XV of 1932.	S 80, Central Provinces Municipal Act, II of 1922.
S. 93, Bombay Municipal Boroughs Act, 1925.	S 132, Madras City Municipal Act, 1919.
S. 79, Bombay District Municipal Act, 1901.	Ss. 107 and 112, Madras District Municipal Act, V of 1920.

Executive Officers Act.—In municipalities to which this Act is extended, the words “Executive Officer” shall be deemed to be substituted for the words in *italics*.

Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Collection of tolls and toll bars.—Chapter VII, Rule 15 of the Municipal Account Code provides that the committees shall place a toll bar at points where the collection is sanctioned and shall exhibit a table of toll rates at each toll bar.

The tolls would only be leviable at the toll bar, no tolls should be leviable on carts passing a road where there is no toll bar, unless the cart is making a detour to evade payment of toll, Cf. 6 Mad. 37.

Powers to
lease the
collection of
octroi, termi-
nal tax or
tolls.

83. The collection of any octroi or terminal tax or toll may be leased by the committee, with the previous sanction of the Commissioner, for any period not exceeding one year; and the lessee and all persons employed by him in the management and collection of the octroi or terminal tax or toll shall in respect thereof—

- (a) be bound by any orders made by the committee for their guidance,
- (b) have such powers exercisable by officers of a committee under this Act as the committee may, from time to time, confer upon them; and
- (c) be entitled to the same remedies and be subject to the same responsibilities as if they were employed by the committee for the management and collection of the octroi or terminal tax or toll.

Notes.

S. 69 of the old Act.

Analogous Law:—

S. 164, Bengal District Municipal Act, 1884.	Municipal Act, III of 1901.
S. 206, Bengal Municipal Act, XV of 1932.	S. 215, Bombay City Municipal Act, III of 1888.
S. 101, Bombay Municipal Boroughs Act, 1925	S. 83, Cantonment Act, II of 1924
S. 81 (a), Bombay District	S. 131 (b), Madras City Municipal Act, 1919.

Toll.—The word is not confined merely to “tolls” for roads and bridges but include toll for public ferries. 1930 Sindh 176, 125 I. C. 223.

Power to lease any other tax.—The section does not give power to farm the right to collect slaughtering fee. Cf. 11 I. C. 665 and 669.

No doubt the word “Tax” in S. 59 (x) of Bombay Municipal Boroughs Act is used in the sense of a toll, that is, a payment charged for a particular benefit, namely, the right to attend a shrine. But in construing S. 81-A, which gives the municipality power to lease the levy of any toll, the court must apply the dictionary which the legislature has provided and hold that the section confers on the municipality power to lease the levy of what is described in the Act as a toll, and as this particular levy on pilgrims is described not as a toll, but as a tax, the municipality has not the power to farm out the levy of this imposition on pilgrims which is described as a “tax” though it might have been more correctly described as a toll. Under the circumstances the contract of lease was held to be

illegal and the committee could not recover the money due under the lease.

The corporation cannot by estoppel acquire a power to do something which is outside its legal capacity.

Where a part of the consideration is unlawful the general rule is, that when you cannot sever the illegal from the legal part of a contract the contract is altogether void. 57 Bom. 178; 1933 Bom. 132; 35 Bom. L. R. 163.

Construction.—The powers of a statutory corporation must be strictly construed and what is not permitted to such a body must be taken as forbidden. Therefore the fact that a municipal committee is expressly granted the power to farm out tolls, does not imply that it can also farm out the collection of slaughtering fee. 11 I. C. 669.

Prosecution of lessees.—A lessee under the section cannot be prosecuted under S. 81 for non-payment of money due on account of tolls or octroi taxes. He can only be proceeded against by a civil suit; *see* 26 Mad. 475; 22 Bom. 709.

When collection of toll or other taxes has been leased and no formal agreement has been executed, as required by S. 47 the committee has been allowed to recover. 2 Mad. 104 and 72 I. C. 703.

Recoveries of dues from lessees.—*See* 1930 Sindh 176.

84. (1) An appeal against the assessment or levy of any or against the refusal to refund any tax under this Act shall lie to the Deputy Commissioner or to such other officer as may be empowered by the local Government in this behalf:

Appeal
against
taxation

Provided that, when the Deputy Commissioner or such other officer as aforesaid is, or was when the tax was imposed, a member of the committee, the appeal shall lie to the Commissioner of the Division.

(2) If, on the hearing of an appeal under the section, any question as to the liability to, or the principle of assessment of, a tax arises, on which the officer hearing the appeal entertains reasonable doubt, he may, either of his own motion or on the application of any person interested, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer the statement with his own opinion on the point for the decision of the Chief Court.

(3) On a reference being made under sub-section (2), the subsequent proceedings in this case shall be, as nearly as may be, in conformity with the rules relating to references to the High Court contained in Section 113 and Order XLVI of the Code of Civil Procedure.

(4) In every appeal the cost shall be in the discretion of the officer deciding the appeal.

(5) Costs awarded under this section to the committee shall be recoverable by the committee as though they were arrears of a tax due from the appellant.

(6) If the committee fail to pay any costs awarded to an appellant within ten days after the date of the order for payment thereof, the officer awarded the costs may order the person having the custody of the balance of the municipal fund to pay the amount.

Notes.

S. 52 of the old Act. The new Act makes a provision for the case of refunds of taxes.

Analogous Law:—

Ss. 113 & 114, Bengal District Municipal Act, 1884.

S. 110, Bombay Municipal Boroughs Act, 1925.

S. 86, Bombay District Municipal Act, III of 1901.

Ss. 217 & 219, Bombay City Municipal Act, III of 1888.

S. 63, Burma Municipal Act, III of 1898.

Ss. 84-86, Cantonment Act, II of 1924.

Ss. 83 & 229, Central Provinces Municipal Act, II of 1922.

Ss. 160, 162-3, 319 and 320, U P Municipalities Act, 1916.

S. 72, Punjab District Board Act, 1883

Court-fee.—An appeal against municipal taxation is exempt from payment of court-fee. *Vide* S. 19 (*xvi*), Court Fees Act.

Revision against decision of Deputy Commissioner or Commissioner.—When the Deputy Commissioner or Commissioner hears an appeal he is merely an appellate authority having jurisdiction given by the Act to deal with questions of civil liability. He is not an inferior criminal court under Cr. P. C. The orders are not subject to revisional jurisdiction of High Court. They are not acting as revenue officers and their orders are not open to revision by Financial Commissioner. 9 Bom. L. R. 1347.

Where a district magistrate passes an order in an appeal from the order of the octroi superintendent, he is acting only under the Municipalities Act, and not under the Cr. P. C. as an inferior criminal court of the High Court within the meaning of S. 435, Cr. P. C. Hence his order is not open to revision by the High Court. 1933 All. 281.

Statutory provisions—excluding ordinary remedy by suit.—Statutory provisions giving jurisdiction to inferior courts, to Government departments or to bodies created *ad hoc* must be strictly construed and the procedure prescribed

must be exactly followed. Where public officers acting under colour of the statutory authority either decline to exercise or act beyond the authority given, it will not be held in the absence of clear language that the legislature intended to destroy the ordinary right of His Majesty's subjects to seek remedy in the courts and to place them at the mercy of irresponsible tribunals or irresponsible state departments. 1932 Mad. 90, 135 I. C. 452, 55 Mad. 298.

Refusal to refund; suit.—An appeal lies to the Commissioner for refusal to refund a tax lawfully levied and that a suit for its recovery does not lie. Plaintiff is bound to exhaust his remedy by appeal before suing for refund. It may be that in some cases the remedy is inconvenient but it is to be observed that, where a statute creates a right and provides at the same time a remedy, that remedy and no other is available and I doubt whether we have power to provide a different remedy because the former is an inconvenient remedy. P. R. 38 of 1911; 9 I. C. 1000.

Appeal to Privy Council.—The decision of the High Court on a reference by the Commissioner is not open to appeal to Privy Council. S. 109 of the C. P. C. has no application to such orders. 1927 Rang. 88.

Reference—exact point of law not formulated.—Under S. 319 of U. P. Act, II of 1916, all that the High Court is required to do is to see a statement of facts made by the district magistrate himself and to express its opinion on a point of law arising out of the statement. It is not the duty of the High Court to investigate the facts. The district magistrate is the appellate authority and the High Court may be required to state its opinion on a point of law for his benefit. The point of law should be formulated by the district magistrate. Consequently where, for the facts, the High Court is asked not to confine itself to the reference made by the district magistrate but to certain other extraneous documents and further the exact points of law which in the opinion of district magistrate arises has not been formulated in terms, the reference is defective and must be returned. 1932 All. 407, 138 I. C. 59.

Final in S. 84.—The word means no appeal lies from the order. 16 I. C. 449; 8 Nag. L. R. 107.

Revision without appeal.—No appeal under S. 84 against levy of octroi on motor cars; revision against order under S. 81 is not entertained. 1931 Lah. 572; 132 I. C. 694.

85. (1) No appeal shall lie in respect of a tax on any land or building unless it is preferred within one month after the

Limitatio.

publication of the notice prescribed by section 66 or section 68 or after the date of any final order under section 69, as the case may be, and no appeal shall lie in respect of any other tax unless it is preferred within one month from the time when the demand for the tax is made:

Provided that an appeal may be admitted after the expiration of the period prescribed therefor by this section if the appellant satisfies the officer before whom the appeal is preferred that he had sufficient cause for not presenting the appeal within that period.

(2) No appeal shall be entertained unless the appellant has paid all other municipal taxes due from him to the committee up to the date of such appeal.

Notes.

S. 53 of the old Act.

Analogous Law:—

S. 115, Bengal District Municipal Act, 1884.	S. 87, Cantonment Act, II of 1924.
S. 86 (a), Bombay District Municipal Act, III of 1901.	S. 84, Central Provinces Municipal Act, II of 1922.
S. 63, Burma Municipal Act, III of 1898.	S. 161, U. P. Municipalities Act, 1916.

Other municipal taxes.—Taxes other than one in dispute.

Taxation
not to be
questioned
except under
the Act.

86. (1) No objection shall be taken to any valuation or assessment, nor shall the liability of any person to be assessed or taxed be questioned, in any other manner or by any other authority than is provided in this Act.

(2) No refund of any tax shall be claimable by any person otherwise than in accordance with the provisions of this Act and the rules thereunder.

Notes.

S. 63 of the old Act.

Analogous Law:—

S. 116, Bengal District Municipal Act, 1884.	S. 75, Central Provinces Municipal Act, II of 1922.
S. 150, Bengal Municipal Act, XV of 1932.	S. 354, Madras District Municipal Act, V of 1920.
S. 119, Behar and Orissa Municipal Act, 1922.	S. 164, U. P. Municipalities Act, 1916.

Caution.—It will be observed that the Punjab Act is much wider in restricting the jurisdiction of civil courts in

matters of taxation than some of the other provincial municipal Acts. The decisions of other High Courts therefore have to be applied with a good deal of caution in the interpretation of this section.

The courts in this province, however, have been influenced by these decisions to a certain extent without regard to the special wording of the sections corresponding to this section.

Jurisdiction of Civil Courts is barred.—The civil courts have no jurisdiction to revise the valuation of houses made by a municipality for the purpose of imposing a house tax. The remedy against over-valuation is provided in the shape of an appeal. Cf. 24 Bom. 607.

In the absence of proof of *mala fides*, perversity or manifest error, civil courts ought not to interfere with the house valuation made by a municipality for the purpose of taxation, unless there is a breach of the rules prescribed by law for making the valuation. 26 Bom. 294.

A suit to set aside an order made on appeal under S. 33 of Bengal Act, III of 1884, [S. 84 of Punjab Act, III of 1911] to the municipal commissioners against a rate assessment, and to reduce the tax levied by them under that Act, on the ground that they have tried the appeal in an improper way, and have exceeded their powers and acted contrary to the provisions of the Act, cannot be maintained in the civil courts. The decision on appeal is final. 1 Cal. 409.

The civil courts have nothing to do with the correctness or otherwise of the valuation made by a municipality. They can only interfere when the assessment is *ultra vires*. The civil courts have no jurisdiction to interfere with the assessment even when the ratepayer had no proper hearing before the Objection Committee. 5 I. C. 321 ; 37 Cal. 374.

Where house tax was erroneously levied in respect of a house which was completed only six weeks before the end of the half year, the persons from whom the tax is levied cannot sue the municipality for refund in a civil court. As the tax had a legal existence there was no disregard of the provisions levying the tax. His remedy is by way of appeal under the Act. 19 Mad. 10.

A suit was brought in the court of the district munsiff of Gantur to recover the amount of profession tax for 1876 levied by the municipal commissioners of Gantur, on the plaintiff upon the supposition that he carried on business as an agent while in fact he carried on no such business. The defendant pleaded that the court had no jurisdiction. *Held*

by the High Court that the court had no jurisdiction to adjudicate on the matter in contest as the tax has a legal existence having been imposed in accordance with procedure and no suit can lie to cancel its incidence. 2 Mad. 37.

In a suit for compensation for refusal to refund certain duty paid on goods exported without verification by the octroi superintendent: *Held* that an appeal lay to the Commissioner from the order refusing refund of a tax lawfully levied, that the plaintiffs were bound to exhaust their remedy by appeal before suing for refund and that the plea that the remedy by appeal was onerous one and inconvenient had no force. 38 P. R. 1911.

Surat City Municipality served, under S. 82, clause (3) of the Bombay District Municipal Act, III of 1901, a notice of demand upon the plaintiff for house tax due by him. The plaintiff instead of proceeding under S. 83 of the Act instituted a suit in the civil court for an injunction to restrain the municipality from recovering the house tax from him. The lower Courts rejected the claim on the ground that, as plaintiff had omitted to appeal to a magistrate under S. 84 of the Act, his suit was premature:

Held, that the injunction prayed for could not be granted. By S. 56 of the Specific Relief Act an injunction cannot be granted where efficacious relief can be obtained by any other usual mode of proceeding. S. 86 of Bombay Act, III of 1901 gave a remedy to the plaintiff, but instead of resorting to it, he filed this suit for injunction. It was discretionary for a court to grant an injunction and that discretion must be exercised judicially with extreme caution and only in very clear cases. 27 Bom. 403.

Jurisdiction of Courts not barred.—The section does not bar the civil courts from interfering when the municipality exceeds its powers. In a case a person was assessed and taxed for occupying holdings within the municipality. As a matter of fact he occupied no holdings in the municipality. He brought a suit for declaration that a resolution of the municipality holding him liable to be assessed to the tax was illegal and inoperative:

It was *held* that the section had no application to a dispute as to whether a person assessed to the tax does and does not occupy a holding and that there is therefore no bar to the cognizance of the present suit by the civil courts. It was also *held* that the word "liability" would seem to mean the "liability" of any person being the occupier or owner of a holding. 21 Cal. 31.

An assessment of tax under S. 85, clause (a) of Bengal Act, III of 1884, made in consideration of assessee's "circumstances and property" altogether or partly outside the local limits of the municipality is *ultra vires* and illegal and the civil courts have jurisdiction to set aside such an assessment. 27 Cal. 849.

S. 116 of Bengal Municipal Act does not take away the jurisdiction of civil courts in a case where it is alleged and established that the assessment, the propriety of which is in controversy is open to objection on the ground that it is *ultra vires*. 35 Cal. 859.

To the same effect *see* 3 C. W. N. 73 and 11 Cal. 275.

In 11 Cal. 275 the assessment was not made on the letting value of the house as laid down in the Act but on the cost of the building, the assessment was set aside as made on a wrong basis though the commissioner's decision was final but it was set aside as without jurisdiction or in excess of jurisdiction.

Under a corresponding provision of Madras Act, III of 1871, it has been held that a suit for recovery of money wrongfully levied as a tax lies because the so called tax had no legal existence.

There is no provision in that Act for levying any tax described in S. 57 of the Act at all otherwise than by the prescribing of the machinery for its levy in Ss. 58—61. If that machinery is not applied no liability to pay such tax can arise.

Where the municipality of a town had not determined on the imposition of a tax of that description till 22nd April of the official year for which such tax was imposed and the list of persons to be taxed for the year was not completed till 14th July of the same year and notice to A of his assessment under such tax was not given him till 8th October in the year: *Held*, that the tax had no legal existence at the time the tax was imposed and that A was entitled to recover the money collected from him as such tax. 1 Mad. 158.

The municipality of Tuticorin demanded Rs. 50 as profession tax from the South Indian Railway Company which had already paid the tax to the municipality at Negapatam. The company complied with the demand under protest and sued the municipality for a refund of the amount paid: *Held* that the court had jurisdiction to hear and determine the suit as the municipality at Tuticorin had no right to levy the tax on the railway company. 13 Mad. 78.

Where a company not liable to the tax had been taxed and the provisions of the Act had not been in substance and

effect complied with, suit would be maintainable and S. 202 of Madras Act, IV of 1884, would be no bar, as there is no difference in principle between the exaction of a tax which has not been legally imposed and the exaction of a tax from a person who is not taxable under the Act. In the latter case no less than in the former there is a substantial disregard of the provisions of the Act. 24 Mad. 205.

House and water tax was levied under District Municipalities Act (Madras) on the school buildings of the Native College, Madura, and was paid by the Manager of the College. On a suit by the manager for refund of the tax it was held that the school buildings are exempted from taxation as buildings exclusively used for charitable purposes. The tax of the municipality was therefore collected illegally. An imposition of a tax which is expressly prohibited by the Act, cannot be deemed to be made under the provisions of the Act. 21 Mad. 367.

By S. 71 of the Madras District Municipalities Act, 1884, the chairman may, at any time, amend the assessment book in manner therein provided; but no person's name or property shall be inserted, nor any increase of assessment made unless notice thereof has been served on such persons not less than thirty days previous to a day to be specified in such notice as the day on which such notice will be revised. By S. 262,* no assessment made under the authority of the Act shall be impeached and no action shall be maintained in any court to recover money paid in respect of any tax levied under the Act provided the directions and provisions of the Act have been substantially complied with. A notice which was served upon plaintiff by a municipal council purported to be issued under S. 71 (2) of Madras District Municipalities Act, 1884, was as follows:—I have the honour to forward herewith a list showing the amount of land and water taxes due for 1895-96 on *devastanam* lands within the limits of this municipality and to request that you will be good enough to cause the amount to be remitted to this office at your earliest convenience:

Held, that the notice was bad, that the terms of the S. 71 (2) had not been substantially complied with and consequently S. 262* (2) had no application. 23 Mad. 523.

A civil court has jurisdiction to determine whether the imposition of a tax is illegal or *ultra vires* and to grant relief if it has been levied on persons who for that reason are not liable to pay the same. 1928 Lah. 53; 9 Lah. 340.

* S. 86 of the Punjab Act.

Conclusiveness of notification under Section 62.—Where a notification describes the class of persons to be taxed as all persons who carry on any trade or follow any profession or calling within the municipal area: *Held*, the notification sufficiently defined the class of persons to be taxed.

It may be that this definition may give rise to certain suits on the ground that the persons taxed do not carry on a trade or follow a profession or calling and that they therefore are not liable to be taxed, the tax is not therefore illegal by reason of the want of definition of the class of persons to be taxed and the members of the Bar cannot object to its imposition as they come within the class defined. 1928 Lah. 53; 9 Lah. 340.

Profession tax should not be a second income tax. A second income tax cannot be imposed though a tax on professions, trades or callings can be imposed. If the method of assessment in reality makes the tax one on income, it is illegal and *ultra vires* even though it purports to be a tax on persons practising profession or carrying on a trade or calling. The tax which can be imposed without the sanction of the Governor-General-in-Council on professions, trades or callings must be one which is not a second tax on incomes of such persons, that is, there must be a flat rate imposed by the tax on each profession, trade or calling or rather on all persons practising a particular profession or carrying on a particular trade or calling. 1928 Lah. 53.

Assessment irregular.—Where there has been no regular assessment or alteration of assessment, and a party sues for a declaration that he is not liable to be classed in a particular class of tax-payer, provisions of S. 86 do not apply and suit lies in the civil court. *Cf.* 1930 All. 222, 127 I. C. 514.

Income.—Income in profession tax will mean net income. It cannot be said that the provisions of the Act have been complied with when the word income is treated as meaning gross income and not net income, and when the basis of assessment is in question the civil court can entertain a suit for setting aside the assessment on the ground that the basis of assessment is wrong and S. 86 does not bar such a suit. *Cf.* 1928 Mad. 346, 110 I. C. 5.

A suit for restraining committee from collecting tax.—A suit for injunction to restrain the municipality from imposing and collecting a tax is not maintainable. But the assessee has a right to object to the assessment before the committee and appeal from its decision to the proper authority. He may also claim a reference to the High Court. *Cf.* 1923 Rang. 75. *See also* 21 All. 348 on grant of injunctions against committees.

Tax collected from a person not taxable—Suit for refund of tax.—If the professional tax is collected from a person who is not taxable under the Act at all, it would amount to a substantial disregard of the provisions of the Act and therefore Cl. (2), S. 228* will not be a bar to the institution of a suit by the person so taxed for the recovery of the amount of the tax collected from him. 1931 Mad. 822, 135 I. C. 462.

Where a municipality levies a tax upon a person who is not liable to pay it, such an act is not in compliance either in substance or in effect with the provisions of the Act. 1929 Mad. 146 (2), 108 I. C. 216.

Ouster of ordinary jurisdiction of Civil Courts.—The power conferred by a special Act on a local authority to impose a particular tax for particular purposes in a specified manner does not oust the jurisdiction of the civil courts to give relief against an illegality committed by that body under cover of statutory powers.

A special law authorises a body to act within and not without the jurisdiction it confers.

A special jurisdiction must be very strictly construed, especially when it seems to have the effect of depriving the subject of a common law right. Therefore, notwithstanding anything contained in the Municipal Act, a civil court has jurisdiction to determine the question whether the imposition of a tax is illegal and *ultra vires* of a municipal authority.

The question of jurisdiction does not depend upon the truth or falsehood of a claim, but upon its nature; it is determinable in the commencement, not at the conclusion, of an inquiry. The merits of a demand are immaterial as affecting jurisdiction.

When the same phrase or expression is used in several codified laws of a particular territory, all emanating from the same source that phrase or expression must have the same significance wherever used, unless such a meaning would be repugnant to the context.

If the illegal imposition of a tax does not give jurisdiction to a civil court, the court cannot legally record any finding whether or not there has been an illegality. 16 I. C. 449; 44 I. C. 910; 74 P. W. R. 1918.

Errors in assessment, which constitute irregularities merely and do not go to the groundwork of the tax and render the assessment void, can be corrected wholly in the manner provided by the statute, which creates the authority, and the remedy so provided must be treated as exclusive. On

* Cf. S. 86 of the Punjab Municipal Act.

the other hand, where the defects in assessment are jurisdictional, rendering them void, the persons aggrieved are entitled to invoke the ordinary judicial remedies, and all other violations of law give rise to jurisdictional questions. In other words, while mere erroneous exercise of judgment is not reviewable by the civil court, any excess of jurisdiction makes the act liable to challenge in such court. The jurisdiction of courts depends upon the allegations in the plaint and not upon those which may ultimately be found true. But a mere assertion that an act was objected to as *ultra vires* will not give jurisdiction. The plaint must make distinct allegations of fact or law how the act was *ultra vires*.

The income taxable is the income derived from the profession or art practised or trade carried on within the municipal limits. If the outside income is brought in and mixed with the income made within the municipality and spent there the whole income will no doubt be taxable, but if the outside income is not at all brought in but is kept at the place where it is earned, it cannot be taken into consideration while assessing the professional tax. 1922 Nag. 10, 65 I. C. 531.

A civil court has jurisdiction to determine the question whether the imposition of a tax is illegal and *ultra vires* and to give relief if a tax has been levied from a person who is not liable to pay the same. A suit for refund of a tax as levied illegally is not excepted from the cognizance of a Small Cause Court under Article 1 of Schedule as such a suit cannot be regarded as one concerning an act purporting to be done by any person by order of the local Government. A munsiff residing in a notified area where profession tax is imposed cannot be said to follow a profession in the popular sense of the term. 44 I. C. 910.

Note.—The court seems to have tacitly relied on rulings under the other Municipal Acts. In this case the tax had been legally imposed. The question related to the applicability of the tax to a particular person. It in fact related to the liability of the munsiff to the particular tax legally imposed. S. 86 (1) would thus appear to exclude the jurisdiction of the civil courts. In any case the munsiff should have exhausted his remedy by appeal before filing a civil suit; see P. R. 38 of 1911 which does not seem to have been cited at the Bar.

The procedure prescribed by Ss. 84 and 86 relate only to appeals against the assessment or levy of a tax under the law and do not provide a remedy for what may be done in violation of that law. The Special Act does not oust the jurisdiction of the civil court to relieve one subject of the Crown against an illegality imposed upon him by any other subject. A civil court can try a suit to recover tax

illegally levied by a municipality though the plaintiff did not first take action under S. 84 of the Municipal Act. 1924 Lah. 619, 75 I. C. 737.

S. 44 of Berar Municipal Law and S. 63 of C. P. Municipalities Act do not oust the jurisdiction of civil courts to determine if a particular tax purporting to be imposed under those enactments is illegal or *ultra vires* even when the tax is levied in pursuance of notification published in the Government Gazette.

It is not obligatory upon the local Government to fix any maximum under S. 66 (2) and, if none is fixed, the municipal committee is still competent to effect variation under S. 66 (4). Cf. 1930 Nag. 153; 122 I. C. 691.

Where jurisdiction of Civil Courts excluded decree of Civil Court is *ultra vires*.—The jurisdiction of civil court is excluded in all matters relating to any valuation, assessment, liability to assessment or taxation by cantonment board. And if a decree is passed it is wholly without jurisdiction and *ultra vires* and cannot be put into execution. 144 I. C. 1016; 1933 All. 163.

Sum levied as Profession Tax credited to a different tax.—Where a company was taxed to a profession tax after exemption and then when finding that such levy was unauthorized, the committee credited it as received towards a tax on companies: *Held* that the committee could not do so and the municipal council cannot impose charges not under the authority of the Act and then when a suit is filed for their recovery allot the money thus unlawfully obtained to some demand alleged to be under the authority of the Act and plead that no suit lies. General powers are conferred upon these local bodies upon the strict understanding that they observe the conditions of the statute to which they owe their origin, and to allow them to levy taxes upon private persons without such strict compliance would be a grave scandal. At any rate courts have no power to relieve local bodies from the statutory powers imposed on them. 1926 Mad. 152 (2), 91 I. C. 297.

Holding. The basis of a "holding" is occupation and the term holding is used with reference to land held by an occupier under one title and surrounded by one set of boundaries.

When a municipal corporation had acted in contravention of the provisions of the statute, it is open to a civil court to declare that the assessment is illegal.

Where there is some indication that the assessment has possibly been illegal but the plaintiff has not been able to establish, with regard to any particular holding, that the

assessment has been on the facts, in contravention of the statute and is liable to be declared *ultra vires* by a civil court the suit should be dismissed. 15 I. C. 548.

See also 7 Bom. 399; 9 Bom. 51; 21 All. 348 noted under S. 62; consult also 34 I. C. 454; 26 I. C. 96; 22 I. C. 237; 39 Cal. 141; 41 Cal. 168; and 50 I. C. 394.

Construction of statutes.—In construing enactments creating fiscal obligations, provisions declaring the liability to the tax are to be distinguished from those providing for its imposition. The machinery for the imposition of the tax may be independent of the obligation of the taxpayer. 3 Mad. 127.

An equitable construction is not permissible in a taxing statute when it is possible to adhere to the words of the statute. The statute is not to be construed like a contract. The power to impose a tax is not contractual and needs no correlative right. 2 Mad. 362.

Rules for assessment *ultra vires*.—When the statute does not specifically provide that the assessment, revision or demand shall be final, the jurisdiction of the civil court cannot be taken away by rules made under the Act. It is well established that a distinct unequivocal enactment is required for the purpose of either adding to or taking away the jurisdiction of a court and that authority to achieve such a result by the subordinate legislation or rules cannot be implied. Such rules will also be *ultra vires*. If the assessment, however, is wholly *ultra vires*, it can be set aside, although it has been made in a series of years without an objection being taken to the assessment roll. 34 I. C. 141; 40 Bom. 446.

Onus of proof.—In a suit against a district board for refund of tax paid it is for the plaintiff to show that he is not liable to pay the tax and that it has been illegally exacted for the district board to prove that the plaintiff has been from him and not properly assessed and is not entitled to a refund. 1933 Lah. 124; 141 I. C. 378.

CHAPTER VI.

MUNICIPAL POLICE.

87. (1) Every committee shall, unless relieved of this obligation by the local Government maintain a sufficient police establishment for police requirements within municipal limits and for the performance of the duties imposed on it by this Act.

Police
establishment

(2) The establishment maintained under sub-section (1) shall consist either of a body of watchmen or of part of the general police force under the local Government within the meaning of section 2 of Act V of 1861, or partly of one and partly of the other, as the local Government may determine; and shall consist of such number of officers and men who shall respectively receive such pay, leave-allowances, gratuities and pensions as the committee may, from time to time, after consultation with the District Magistrate and the Inspector General of Police, and subject to the final decision of the local Government, direct.

Notes.

S. 79 of the old Act.

Analogous Law.—S. 74 of N. W. P. and Oudh Act, I of 1900.

ef of
i t t ees
Police
s.

88. (1) The local Government may relieve any committee of the whole or part of the cost of the police establishment and may enter into a contract with the committee on such terms as may be agreed on, that, in consideration of such relief, the committee shall pay periodically a sum not exceeding the amount thereof, or undertaking any services within the municipality to which the municipal fund can properly be applied, and which are estimated to cost not more than the amount of the relief.

(2) When a committee has been relieved under this section of the whole or part of the cost of the police establishment which it is required to maintain, the local Government shall maintain such police establishment as it shall consider necessary, and the establishment so maintained may consist either of a body of watchmen or of a part of the general police force under the local Government within the meaning of section 2 of Act V of 1861, of partly of one and partly of the other.

Notes.

S. 80 of the old Act.

Analogous Law.—S. 75 of N. W. P. and Oudh Act, I of 1900; S. 55 of C. P. Act, XVI of 1903.

All the municipalities in the Punjab have been relieved of the charges for police establishment and buildings with effect from 1st April 1911. [See Municipal Manual, pages 377 to 382, for various orders of the Government on the subject.] In consideration of the relief the committees may be required to undertake other services, but so far no orders have been issued by Government requiring municipalities to undertake any particular service.

89. (1) If the establishment maintained under this chapter consists wholly or in part of watchmen, they —

Appoint-
ment, liabilities & duties
of Municipal
Watchmen.

- (a) shall be under the orders of the Superintendent of Police, subject to the general control of the District Magistrate;
- (b) shall be appointed and promoted, and shall be liable to dismissal, suspension, reduction or fine, under such rules as the local Government may make in this behalf;
- (c) shall perform such duties as the local Government may, subject to the provisions of this Act, direct; and
- (d) shall possess the same powers, be entitled to the same assistance, enjoy the same protection, be subject to the same responsibilities, and be liable to the same penalties, as if they were police officers enrolled under Act V of 1861.

(2) Any person obstructing any such watchman in the discharge of his duties may be arrested without warrant by a police officer or by any such watchman.

Notes.

S. 81 of the old Act.

Analogous Law. — S. 76 of N. W. P. and Oudh Act, I of 1900; S. 56 of C. P. Act, XVI of 1903.

90. If the establishment maintained under this chapter or any portion thereof consist of part of the general police force, the local Government may, notwithstanding anything contained in Act V of 1861 or in any other Act for the time being in force, define, subject to the provisions of this Act, the duties which the officers and men of the establishment or such portion thereof may or may not be required to perform.

Duties of
Police enrolled
under Act
V of 1861.

Notes.

S. 82 of the old Act.

Analogous Law. — S. 77 of N. W. P. and Oudh Act, I of 1900; S. 57 of C. P. Act, XVI of 1903.

91. (1) Every member of a police establishment under this Act shall give immediate information to the committee of any offence committed against this Act or the rules or bye-laws, and shall be bound to assist all members, officers and servants of the committee in the exercise of their lawful authority.

Powers and
duties of
Police in res-
pect of offen-
ces against
Act and
rules, and
assistance to
Municipal
authorities.

(2) Every member of such police establishment may arrest any person committing in his view any offence against this Act or the rules or bye-laws —

(a) if the name and address of the person are unknown to him, and

(b) if the person declines to give his name and address, or if there is reason to doubt the accuracy of the name and address if given.

(3) A person arrested under this section may be detained until his name and address have been correctly ascertained:

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a magistrate except under the order of a magistrate for his detention.

Notes.

S. 83 of the old Act.

Analogous Law:—

S. 365, Bengal District Municipal Act, 1884.

S. 534, Bengal Municipal Act, XV of 1932,

S. 376, Behar and Orissa Municipal Act, 1922.

S. 207, Bombay Municipal Boroughs Act, 1925.

S. 168, Bombay District Municipal Act, III of 1901.

Ss. 516 & 522, Bombay City Municipal Act, III of 1888.

S. 194, Burma Municipal Act, III

of 1898.

Ss 545 & 546, Calcutta City Municipal Act, III of 1923.

S. 222, Central Provinces Municipal Act, II of 1922.

S. 402, Madras City Municipal Act, 1919

Ss. 355 & 356, Madras District Municipal Act, 1920.

Ss. 211 & 38, Rangoon City Municipal Act, 1922.

S. 317, U P. Municipalities Act, 1916

Sometimes the police refuse to give help as required by the section on the ground that the police establishment is no longer maintained out of municipal fund and that the existing police establishments are not establishments under the Act. I do not think the refusal is justified. If the refusal were justified the municipalities cannot be said to have derived any benefit from the relief. If the committees are relieved of these charges then under S. 88 the local Government has to maintain a police establishment. Such establishment whether maintained out of municipal fund or by Government is an establishment under the Act and therefore every member of such police establishment is bound to help as required by S. 91.

Police protection at fairs etc.

92. When special police protection is, in the opinion of the local Government, requisite on the occasion of any fair, agricultural show or industrial exhibition managed by a committee, or for the purpose of guarding houses evacuated on account of plague, the local Government may provide such protection, and the committee shall pay the whole charge thereof or such portion of such charge as the local Government may consider equitably payable by it.

Notes.

S. 84 of the old Act with the addition of provision for guarding houses evacuated on account of plague.

Analogous Law.—S. 126 of U. P. Act, II of 1916; S. 223 of C. P. Act, II of 1922.

CHAPTER VII.

EXTINCTION AND PREVENTION OF FIRE.

93. For the prevention and extinction of fire the committee may establish and maintain a fire brigade, and may provide any implements, machinery or means of communicating intelligence which the committee may think necessary for the efficient discharge of their duties by the brigade.

Establishment and maintenance of fire brigade.

Notes.

S. 172 of the old Act.

Analogous Law:—

S. 349-A, Bengal District Municipal Act, 1884.

S. 397, Bengal Municipal Act, XV of 1932

S. 269, Behar and Orissa Municipal Act, VII of 1922.

S. 359, Bombay City Municipal

Act, III of 1888.

S. 138, Burma Municipal Act, III of 1898.

S. 144, Central Provinces Municipal Act, II of 1922.

S. 187, United Provinces Municipalities Act, 1916.

Notes.

The duty of maintaining a fire brigade is not obligatory.

94. (1) On the occasion of a fire in a municipality any magistrate, the secretary of the committee, any member of committee, any member of a fire brigade, maintained by the committee then and there directing the operations of men belonging to the brigade, and* * † [any police-officer not below the rank of Sub-Inspector] may—**

Power of fire brigade & other persons for suppression of the fire.

- (a) remove or order the removal of any person who by his presence interferes with or impedes the operations for extinguishing the fire or for saving life or property;
- (b) close any street or passage in or near which any fire is burning;

* The words "if directed to do so by a Magistrate or the secretary or a member of committee" were omitted for the Punjab by Punjab Act, XV of 1926.

† The words in brackets were substituted in the Punjab for the words "above the rank of constable" by Punjab Act, XV of 1926.

- (c) for the purpose of extinguishing the fire, break into or through or pull down, or cause to be broken into or through or pulled down, or used for the passage of houses or other appliances, any premises;
- (d) cause mains and pipes to be shut off so as to give greater pressure of water in or near the place where the fire has occurred;
- (e) call on the persons in charge of any fire engine to render such assistance as may be possible; and
- (f) generally, take such measures as may appear necessary for the preservation of life or property.

When any Government building is endangered by such a fire the officer of the Public Works Department for the time being in charge of the building may exercise the powers conferred on a magistrate by this sub-section.

(2) No person shall be liable to pay damages for any act done by him under sub-section (1) in good faith.

(3) Any damage done in the exercise of a power conferred or a duty imposed by this section shall be deemed to be damage by fire within the meaning of any policy of insurance against fire.

Notes.

S. 173 of the old Act.

Analogue Law:—

S. 349-B, Bengal District Municipal Act, IV of 1884.

S. 398, Bengal Municipal Act, XV of 1932.

S. 270, Behar and Orissa Municipal Act, 1922.

S. 191, Bombay Municipal Boroughs Act, 1925.

Ss. 361-3, Bombay City Municipal Act, III of 1888.

S. 139, Burma Municipal Act, III of 1898.

S. 145, Central Provinces Municipal Act, II of 1922.

S. 188, United Provinces Municipalities Act, 1916.

Control by fire brigade.—On the occasion of fire any member or other person named may take the command of all municipal officers and servants and other persons present and may order the removal of any person who interferes by his presence with the operations of the fire brigade. Where a member of the fire brigade ordered the exclusion of all persons from certain premises where the brigade was engaged in extinguishing a fire, appellant, a member of the volunteer fire brigade, was refused admission whereupon the said member endeavoured to force an entrance and in doing so assaulted the respondent. It was *held* that the effect of the provision was to give to the brigade established by the urban authority control over the premises and that the appellant was rightly excluded and could not justify his attempt to

force an entrance and therefore rightly convicted of an assault. *Carter v. Thomas*, (1893) 1 Q. B. 673.

Charges for use of fire brigade.—A local authority is not entitled to make terms or demand payment for the use of fire brigade within its local limits, *Bridlington Local Board of Health v. Bower*, 38 J. P. 73; but it is entitled to do so when the fire brigade is employed outside. *Salé v. Phillips*, (1894) 1 Q. B. 349.

Liability for damages.—When an authority bound to supply water for extinguishing a fire fails to do so, it is liable for damages [*Simpson v. South Oxfordshire Water and Gas Co.*, (1908) 1 K. B. 917] unless the scarcity of water was due to causes beyond its control.

This Act, however, imposes no obligation on committees to supply water.

95. The powers conferred by the last foregoing section shall be subject to any regulations, conditions or restrictions which may be imposed by rule.

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Notes.

S. 174 of the old Act.

Analogous Law:—

S. 140, Burma Act, III of 1898. S. 146, Central Provinces Act, II of 1922.
S. 274, Behar and Orissa Municipal Act, 1922.

CHAPTER VIII.

WATER SUPPLY.

96. (1) The committee may and when the local Government so directs shall, provide the area under its control or any part thereof with a supply of wholesome water sufficient for public and domestic purposes.

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(2) For the purpose of providing such supply within the municipality the committee shall cause such tanks, reservoirs, engines, pipes, taps, and other works as may be necessary to be constructed or maintained, whether within or without the municipality; and shall erect sufficient stand pipes or other conveniences for the gratuitous supply of water to the public.

(3) When required by the Medical Officer of Health, the committee shall arrange for the examination of water supplied for human consumption for the purpose of determining whether the water is wholesome.

Notes.

The greater portion of this chapter is new. Most of the provisions of this chapter are taken from City of Madras Municipal Act and City of Bombay Municipal Act. Cf. Ss. 139, 192, and 194 of Madras Act III of 1904 and Ss. 272 and 276 of Bombay Act III of 1884. S. 96 has been entirely recast by Amendment Act II of 1923. Supply of water can be made compulsory by local Government.

Executive Officers Act.—Duties imposed under sub-S. 3 of this section shall not be performed by committee but may be performed by executive officer in municipalities to which the Executive Officers Act has been extended.

Analogous Law:—

S. 287, Bengal Municipal Act, 1884.

Ss. 278-9, Bengal Municipal Act, XV of 1932.

S. 313, Behar and Orissa Municipal Act, 1922.

Ss. 171 & 261 (1), Bombay City Municipal Act, III of 1888.

Ss 215 & 216, 2.9, Calcutta City

Municipal Act, III of 1923.

Ss 164 & 165, Madras City Municipal Act, 1919.

Ss. 126 & 129, Madras District Municipal Act, V of 1920.

Ss. 224 & 35 (f), U. P. Municipalities Act, 1916.

English Law:—

Ss. 5, & 5b Public Health Act, 1875.

Area of supply.—The committee can only supply water in municipal area and the works for such supply may be constructed anywhere within or without municipal area. The supply of water outside municipal area will be illegal; *see* Notes under S. 18, pp. 95 & 96.

Liability of a Corporation for damage due to escape of Water.

—The general rule as to the liability of waterworks companies and other bodies having parliamentary powers, in respect of damage caused by their operations, is thus summarised: "Where water is diverted or regulated for public purposes under Act of Parliament, as by conservators of a river, a waterworks or canal company, the authorities managing the water are not liable to an action for its escape, though caused by them, unless they exceed their powers, or are negligent in the execution of them; though the party injured may be entitled to compensation if the Act so provides" (Gale on "Easements," 6th Ed, p 415). Accordingly, in the case of *Cracknell v. Thetford Corporation* (1869), L. R. 4 C. P. 629, the defendants having been empowered by a private Act of Parliament to render navigable the river Brandon, and to take tolls for the purpose of repaying the necessary expenses and having, in the exercise of their powers under the Act, erected stanches in the river, and the result of these, combined with the natural growth of the weeds in the river and the accumulation of silt against the

stanches, being that the river overflowed its banks and damaged the plaintiff's land; it was *held*, that there was no obligation on the defendants to cut the weeds or dredge the silt, unless it was necessary to do so for the benefit of the navigation; and that the plaintiff's remedy, if any, was not by action against them for not doing so, but by applying for compensation under the Act. See also *Parrett Navigation Co. v. Robins* (1842), 10 M. & W. 593.

The authorities will be found fully discussed in *Geddis v. Proprietors of Bann Reservoir* (1878), 3 App. Cas. 430, which case establishes the further principle, that "if by a reasonable exercise of the powers either given by statutes to the promoters, or which they have at common law the damage could be prevented, it is, within this rule, 'negligence' not to make such reasonable exercise of their powers": per Lord Blackburn, at p. 546.

A main belonging to a waterworks company burst, and the water flooded the plaintiff's premises, causing considerable damage: *Held* (*disting.* this case from *Rylands v. Fletcher* [1868], L. R. 3 H. L. 330), that the company being authorised by Act of Parliament to lay the main, and having been guilty of no negligence, were not liable in damages to the plaintiffs (*Green v. Chelsea Waterworks Co.*, [1894], 70 L. T. 547). See a decision to the same effect by Huddleston, B., in *Snook v. Grand Junction Waterworks Co.*, (1886), 2 T. L. R. 308.

Where a work of a public character (as a canal) has been constructed under the authority of an Act of Parliament a right of action for an injury not occasioned wilfully, nor by any act necessarily causing it, but arising from the user of the work (as, for instance, through the overflow of the water of canal), must be founded on negligence, and negligence is the essence of the action; and although the jury has given a verdict for the plaintiff, and it has been proved that the proximate cause of the injury was an action of the company's servants (as raising a flood-gate), yet if it is doubtful whether that act necessarily must have caused the injury, and the jury also finds that there was no negligence, the verdict will be entered for the company (*Whitehouse v. Birmingham Canal Co.* [1857], 27 L. J. Ex. 25).

If works made lawful by an Act of Parliament be constructed negligently or unskilfully, and damage result, the wrongdoers are liable in damages, notwithstanding the protection of the Act of Parliament under which they acted. "The distinction is now clearly established between damage from works authorised by statutes where the party is generally to have compensation, and the authority is a bar to an

action, and damage by reason of the works being negligently done as to which the owner's remedy by way of action remains": per Crompton, J., in *Brine v. G. W. Rail Co.* (1862), 2 B. & S. 402. And see *Clothier v. Webster* (1832), 12 C. B. N.S.) 790; *Lawrence v. G. N. Rail Co.* (1851), 16 Q. B. 643 and *Mersey Docks Trustees v. Gibbs* (1866), L. R. I. H. L. 93.

A further point decided in this case was that, if a man has a right to do a particular act, his motive in doing so is immaterial and cannot render the act unlawful.

A local board, under cover of legislative powers, cannot make a sewer which will have the effect of polluting the water of a canal. It was held, therefore, that the board must be restrained from permitting sewage communications to be made between the adjoining houses and the main sewers so long as it should discharge itself in to the canal. *M. S. & L. Rail. Co. v. Workshop B. of H.* (1856), 25 Beav. 198.

Theft of Water.—Water supplied by a water company to a consumer, and standing in his pipes, may be the subject of a larceny at common law. *Pierens v. O' Brien* (1833), 11 Q. B. D. 21.

Liability of Commissioners for compensation for non-supply.—The provisions of Ss. 95, 97 and 234 of Punjab Municipal Act had corresponding provisions in City of Madras Municipal Act of 1878. The following ruling under the Madras Act is instructive:—

By the provisions of the City of Madras Act, 1878, if water rate is levied by the municipality they are bound to supply water for house service to every ratepayer who desires and provides the necessary works to connect his premises with the main, which ought to be within 150 yards of his premises, and the ratepayers are bound to pay water rate whether or not they avail themselves of the privilege of house service. If the municipality do not perform this duty the ratepayer has a remedy by action and may recover compensation, either under the provisions of S. 433 (which provides that a person aggrieved by the failure of the municipality to do their duty may bring his action and the court may either direct the duty to be performed or make such order as the court may deem fit) or under those of the Statute of Westminster.

If the Court does not order the execution of works under S. 433, the only other order it could make would be an order for reasonable compensation. The legislature intended the water rate to be a payment for a benefit conferred and the tax should not be levied till water can be supplied. If in any part of the city the municipality are able to supply

water and desire to obtain at once a return for their works they should apply to the Government to exempt the rest of the city from the operation of the Act.

When a public body has received by statute a discretionary power to levy and is laid under an obligation to collect rate, an injunction cannot be granted by a court so as to deprive such public body of the power of exercising its discretion or to prohibit it from discharging the obligation. 3 Mad. 201.

See also 2 Mad. 362.

Wholesome water.—If the water gets contaminated after passing through municipal mains the committees will not be liable for damages as the following case will show:—

The defendants were empowered by special Act incorporating (with the exception of certain provisions) the Waterworks Clauses Act, 1847, to supply water for domestic use within the limits and from the sources described by the Act. By the Act the defendants were entitled to prescribe the materials to be used for service pipes by persons supplied with water, and by bye-laws they prescribed that the materials might either be lead or cast-iron. Service pipes of lead were, upon the application and at the expense of the plaintiff and his landlord, laid down by the defendants from their mains to the plaintiff's house. The service pipes when laid belonged to the consumer of the water supplied through them. By the Waterworks Clauses Act, 1847, S. 35, "the undertakers shall provide and keep in the pipes to be laid down by them a supply of pure and wholesome water, sufficient for the domestic use of all the inhabitants of the town or district within the limits of the special Act, who shall be entitled to demand a supply, and shall be willing to pay the water rate for the same." Water which was pure and wholesome in the mains of the defendants, was supplied by them to the plaintiff, but in its passage through the service pipes it was contaminated by the lead, and he contracted lead poisoning. In action against the defendants for injuries sustained from impure and unwholesome water: Held that he had no cause of action. *Milnes v. Huddersfield Corporation*, (1886) 11 App. Cas. 511; 50 J. P. 676.

Committees under an obligation to take measures to prevent damage or injury.—Where persons are incorporated by Act of Parliament for a particular purpose, and have full powers given them to effect that purpose, if the effecting of it may occasion (not only in the course of originally executing the necessary works for the required purpose, but at recurring intervals afterwards) inconvenience or injury to others, they may be treated as under an obligation

to take, from time to time, measures to prevent the occurrence of such inconvenience and injury.

Where the legislature has authorized certain persons to effect a certain purpose, and has given them the powers necessary to effect it, they may exercise these powers to their full extent without incurring responsibility, but in so doing they must not occasion any needless injury to any one.

A local Act of Parliament incorporated certain persons for the purpose of securing a regular and proper supply of water to millowners whose works were situated on the banks of the river B. Those persons had powers given them to collect the water of several small streams into a reservoir, and as often as necessary, to send down those waters to the B, through the channel of a stream called M. The second clause of the Act directed them to "make, erect, construct, maintain, repair, and keep," by means of a reservoir, a due and adequate supply of water for the river B at all seasons of the year—and to enter on the lands of the different streams named—to do what was necessary for the conveyance and due regulation of the supply of such waters, and "to make, erect, alter, maintain, repair, widen, deepen, scour, cleanse, and keep proper and sufficient conduits, aqueducts, channels and watercourses, drains, feeders, weirs, dams," etc. The 82nd clause gave similar directions, and ordered that the surplus water should be returned into the different streams from which it had been taken, and also made provisions for supplying with water the cattle depasturing in fields adjoining.

The persons incorporated under the Act erected the reservoir, collected the waters of the different streams and sent them through the channel of the M to supply the B but, after a time, neglected to cleanse the channel of the M, so that at times it overflowed its banks and did damage to the lands of the adjoining proprietors:

Held, that under the words of the Act there was an obligation on the persons so incorporated to take care that the due execution of the works and operations intended by the Act should not be injurious to the lands lying along the banks of the M, and that the bed or channel of the M must be cleansed and kept in a proper state for the flow and reflow of the water that had to pass through it. *David Geddis v. Proprietors of the Bann Reservoir*. (1878) 3 App Cas. 430.

Negligence of the Committee in maintaining the under-ground system of supply—limitation.—Under the provision of the Municipal Act, the subterranean system of connections, pipes and ferrules attached and fixed to the municipal main whether

used for the benefit of the public generally or connected with private houses so far as these latter are actually on the municipal lands and streets is under the control, supervision and management of the municipality and it is its duty to see that it is properly maintained and kept in working order. If owing to breaking of such pipes and ferrules water escapes and the subterranean soil is thereby flooded with the result that the houses in the vicinity are damaged and if the municipality fails to take steps in proper time to stop the leakage of water, it is liable for the damage.

A case of damage to houses by bursting of municipal fittings by its negligence is governed by Article 36 and not Article 2, Limitation Act. 121 I. C. 500 ; 1929 Lah. 730. *Dist.* in 122 I. C. 111.

See also P. R. 88 of 1913 noted under S. 224.

Damage by water supply system—No liability without proof of negligence—Onus of negligence.—A corporation in the exercise of powers derived from statutes is not liable in damages unless these powers are negligently exercised. The same principle applies even where the powers are permissive.

P owned a plot of land with a building thereon. To the north of the building there was a small narrow municipal street in which the municipality had in 1877-80 laid its main pipe for supply of water to the residents of the locality. The pipe was at a depth of 8 or 9 feet below the surface of the street. There was a leakage from the pipe and owing to the pipe being at such a long distance from the surface the water did not come up to the surface but collected under P's building and percolated in all directions. Damage was caused in P's building and he sued the municipality in damages.

Evidence showed that the damage was caused by a blow out of one of the lead joints of the connexions of two pipes and that displacement was due probably to settlement of the ground of a lane above the pipes. But no further attempt was made to give evidence of: (a) the condition of surrounding surface of the street at the time of the accident, (b) the ordinary life of such pipes and joints, and (c) the condition in which the pipe line and its joint were when it was removed after the accident:

Held, that the burden of proof was on P to establish that the leakage was due to the negligence of the defendant, and as there was no evidence to prove definitely the cause of the leakage, the mere fact that the leakage took place under the circumstances which were consistent with the existence and non existence of negligence would be insuffi-

cient to shift the onus on the defendant to establish the real cause of such leakage. 1932 Sindh 131, 140 I. C. 717.

Burden of proof of negligence.—The ordinary rule applicable to a suit based on negligence not arising out of contract is that the burden is always on the plaintiff to prove that he suffered the loss complained of in consequence of the negligence of the defendant. In order to discharge the burden he must prove facts inconsistent with due diligence: where evidence adduced by him is equally consistent with the existence or non-existence of negligence, he is out of court. *Ibid.*

Failure to take best step in emergency is not necessarily negligence. 1932 Sindh 123, 139 I. C. 605.

Supply for private and public purpose.—The purpose for which a water supply is required in a city admits of a broad distinction into private and public. The private purposes are those for which a private person requires it, such as domestic use or the process of manufacturers: the public purposes for which water is required are for employment in extinguishing fires and in carrying on the work of sanitation, the flushing of sewers and the watering of streets and the prevention of disease among those classes of the inhabitants who are unable to provide themselves with water suitable for domestic consumption. It is the province of public bodies such as municipal commissioners, to make provision to meet the public requirements where this has not been effected by private enterprise, and inasmuch as, in the discharge of this public duty, they obtain facilities for meeting private requirements also, it is usual to empower or compel them to do so, and while the cost of meeting public requirements is fairly cast on the whole body of ratepayers, the cost of providing for private consumption is with equal justice imposed on those who either do, or are in a condition to, benefit by it. 3 Mad. 201.

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97. (1) The Committee may, on application by the owner of any building, arrange for supplying water from the nearest main to the same for domestic purposes in such quantities as it deems reasonable, and may at any time limit the amount of water to be so supplied whenever it considers it necessary.

(2) No additional charge shall be payable in respect of such supply, in any municipality in which a water-tax is levied, but for water supplied in excess of the quantity to which such supply is under sub-section (1) limited, and in other municipalities for all water supplied under this section payment shall be made at such rate as may be fixed by the committee with the approval of the local Government.

Explanation.—A supply of water for domestic purpose shall not be deemed to include a supply—

- (a) for animals or for washing vehicles where such animals or vehicles are kept for sale or hire,
- (b) for any trade, manufacture or business,
- (c) for fountains, swimming baths, or for any ornamental or mechanical purpose,
- (d) for gardens or for purposes of irrigation,
- (e) for watering roads and paths,
- (f) for building purposes.

Notes.

This section is new. Cf. S. 193 of Madras Act, III of 1904.

Executive Officers Act.—The functions vesting in the committee under sub-section 1 of the section shall *not vest in the committee* but in the executive officers in municipalities to which the Executive Officers Act has been applied.

Analogous Law:—

Ss. 288 & 295, Bengal District Municipal Act, 1884.

Ss. 3 (56), 300 & 302, of Bengal Municipal Act, XV of 1932.

S. 3 (56), Bengal Village Local Self-Government Act, V of 1919.

Ss. 3 (31) & 316, Behar and Orissa Municipal Act, 1922.

Ss. 6 & 91 (1), Bombay Municipal Boroughs Act, 1925.

S. 71, Bombay District Municipal Act, III of 1901.

S. 169 (1), Bombay City Municipal Act, III of 1888.

Ss. 3 (24) & 223 of Calcutta City Municipal Act, III of 1923.

S. 169, Madras City Municipal Act, 1919.

S. 131, Madras District Municipal Act, V of 1920.

S. 3 (xlv), Rangoon City Municipal Act, 1922.

Ss. 2 (25), 229, & 230, U. P. Municipalities Act, 1916.

English Law:—

Ss. 56 & 58, Public Health Act, 1875.

Delegation.—Powers under the section can be delegated, *vide* S. 33 of the Act.

Explanation—Domestic purposes.—The question as to what are “domestic purposes” in relation to water supply has been the subject of considerable discussion in the courts in England. The phrase would appear to include a supply for watering a horse and washing a carriage in a stable attached to a house and used solely for the accommodation of the occupier (*Bushby v. Chesterfield Waterworks Co.*, [1858] 22 J.P. 689); for washing a motor car used by a medical practitioner for the purposes of his profession (*Harrogate Corporation v. Mc Kay*, [1907] 2 K. B. 611; 71 J. P. 458); for a work-

house (*Liskeard Union v. Liskeard Waterworks Co.*, [1881] L. R. 7 Q. B. D. 505; 45 J. P. 780); for warming business premises, and cleaning and household purposes of a resident caretaker (*Smith v. Muller*, [1894] 1 Q. B. 192); for a fixed bath (*Weaver v. Cardiff Corporation*, [1883] 47 J. P. 599); and to a boarding house for the use of the inmates (*Pidgeon v. Great Yarmouth Waterworks Co.*, [1902] 1 K. B. 310).

On the other hand, a supply for "domestic purposes" does not include a supply of water for cattle, or for horses or for washing carriages where such horses or carriages are kept for sale or hire by a common carrier, or a supply for any trade, manufacture or business, or for watering gardens, or for fountains, or for any ornamental purposes (see S. 12 of the Waterworks Clauses Act, 1863). The phrase may include a supply for a swimming bath for the use of the occupier of a house and his family, though not for a supply for a swimming both for a school (see *Bernard Castle Urban District Council v. Wilson*, [1902] 2 Ch. 45), where the proper test to be applied for determining whether a supply is for "domestic purposes" or not are laid down. In that case Vaughan Williams, L. J., says: "From the cases which have been decided upon that section (S. 53 of the Waterworks Clauses Act 1847), it is clear that it would not be said that the domestic purposes is the only one which has to be attained inside the dwelling-house of the occupier, nor that it must be such as is essential to the occupation of the house, or even to the healthy occupation of the house. It is plain on the authorities that there is no such limitation of the meaning of "domestic purposes" . . . The use of water for the more convenient occupation of a house, or for increasing its amenities to the owner or occupier, is *prima facie* a use for "domestic purposes." Romer, L. J., lays down the law as follows: "It has been argued that the only test whether a supply of water is required for domestic purposes is whether the water is used and consumed by the occupier of the house for the private purposes of himself and his household. In my opinion that is too wide a proposition, and it is not the right test. For instance, suppose that water supplied at high pressure (as it generally is) were used by an occupier to drive a dynamo for the purpose of lighting his house by electricity. In my opinion it could not be said that such a use of the water would be a use for "domestic purposes." Again, suppose a man had a very large garden attached to his house; could he call upon a water company to fill with water a pond which he chose to dig in his garden for the purpose of boating? I think such a use of the water would not be for domestic purposes. It appears to me that regard must be had to the ordinary habits of

domestic life in this country, and also to what can reasonably be considered a domestic purpose. And I think the test of reasonableness ought also to be applied to the quantity of water required. . . . In determining what can reasonably be considered a 'domestic purpose,' I think you ought to consider not only the consumer but also the obligation of the water company or authority to afford a *compulsory* supply to their district for domestic purposes. It is a serious question whether in every case in which an occupier desires to have a supply of water for his enjoyment and pleasure, the water company or authority are bound to supply him without regard to the ordinary requirements of their district for the purposes of drinking, washing, and sanitation. . . . In my opinion you must approach the consideration of each case with some regard to what is reasonable, and see in each case whether the supply of water which is wanted is reasonably a supply for domestic purposes. The point as to what purposes would properly fall within the description of "domestic purposes" was further discussed in *South West Suburban Water Co. v. St. Marylebone Union*, (1904) 2 K. B. 174; 68 J. P. 257, where a supply for domestic purposes was required for a Poor Law School.

In this case it was held that the school was a "dwelling house" within the meaning of Ss. 48 and 53 of the Waterworks Clauses Act, 1847, although the "business" of a school was carried on upon the premises. It was pointed out by the learned Judge (Buckley, J.) who decided the case, that S. 12 of the Waterworks Clauses Act, 1863, did not exclude premises, even if occupied purely for "business" purposes, as a factory, from the right to have a supply for "domestic purposes" such as for supplying hand basins or flushing water-closets; and it was held that a supply for "domestic purposes" within the meaning of S. 53 of the Act of 1847 would include (1) a supply for cisterns for flushing water-closets, (2) a continuous and constantly running supply to urinals, (3) a supply for hydrants to which houses were attached for washing the school-yards, and (4) a supply for boilers for warming the buildings by circulation, and for heating water for laundry purposes, but would not include a supply of water to boilers for the purpose of driving machinery for raising water from wells, or of driving machinery in the laundry. Under the terms of their special Act, a water company were bound to supply dwelling-houses with water for domestic purposes at certain rates, but were not bound to supply any dwelling-house with water (otherwise than by meter or under special agreement) where any part of the house was used for trade or business for which water was required, Jelf, J., held that a supply given to a workhouse,

and used for a steam boiler supplying power for machinery in the workhouse laundry, and for its piggeries, was, in part, at any rate, a supply for business purposes, and could not be demanded except by meter, or under special agreement *Chester Waterworks Co. v. Chester Union* (1907), 71 J. P. 133. The Appellate Court while doubting whether a "business" could be said to be carried on in a workhouse, held that the guardians could demand a supply by rate for domestic purposes, but must pay by meter or agreement for water for other purposes; and, as a preliminary step, must provide means for distinguishing the two supplies: (1908) 72 J. P. 121.

A supply of water to business premises is a supply for "domestic purposes" within the meaning of S. 25 of the Metropolitan Water Board (Charges) Act, 1907, if the water is used for domestic as distinguished from business purposes.

Water was supplied by the defendants to the plaintiffs a gas company, who had large premises. No one slept or resided on the premises, nor was any part of the premises charged with the payment of inhabited house duty. The plaintiffs had a large number of employees, for whose use they had to supply sanitary conveniences, and in addition thereto a number of taps for the supply of water for the purposes of washing or drinking. The water so supplied was solely used by those employees while engaged in carrying on the plaintiffs' trade or business. For their manufacturing purposes the plaintiffs drew a supply of water from a stream that flowed through their premises:

Held that the water supplied by the defendants to the plaintiffs was for "domestic purposes" within S. 25 of the Metropolitan Water Board (Charges) Act, 1907, and that payment therefor must be made on that footing, subject to the rebate allowed by S. 9 of the Act. *South Suburban Gas Co. v. Metropolitan Water Board*, (1909) 2 Ch. 666.

For further notes see Aiyangar's "Law of Municipal Corporations," pp. 429-432, Lumley's "Public Health Act" 10th Ed. p. 2191; Michael and Will on "Law relating to Gas and Water" 7th Ed., pp. - 211-219.

"Railway purposes"—Urinals and closets at Railway Station.—A supply of water to the urinals and water-closets at the Railway Station is not a supply for "domestic purposes" within the meaning of that expression in the Metropolitan Water Board (Charges) Act, 1907.

Per Cozens-Hardy, M. R.—A railway company is bound to afford reasonable lavatory accommodation for the use of passengers, and may be compelled by the Railway Commis-

sioners so to do. *South Suburban Gas Co. v. Metropolitan Water Board* (1909) 2 Ch. 666 considered and distinguished; *Metropolitan Water Board v. London, Brighton, and South Coast Ry.*, (1910) 2 K. B. 890.

Domestic purposes—Trade purposes — Factory. — The defendants, who were manufacturers, required for their factory a supply of water for their employees to use for drinking and personal washing. The water was also used to cleanse the urinals and closets used by the employees. No one resided upon the premises: *Held* that the water was supplied for domestic purposes, and not for trade purposes, within the meaning of the Metropolitan Water Board (Charges) Act, 1907. *Metropolitan Water Board v. Colley's Patents, Ltd.* (1912) A. C. 24.

The defendant was the occupier and licensee of a public house, within the district of the Metropolitan Water Board, which was supplied with water in the ordinary way by supply pipes from the water board's mains. The water so supplied was charged for as a supply for domestic purposes by a rate of 5 per cent. upon the rateable value of the house. The defendant carried on in the house, in addition to the ordinary business of a public house, a catering business for persons who came there to lunch, but did not reside there. Luncheons were served there every day, which involved an increased use of water for such purposes as cooking and washing up plates and dishes. The water board claimed to be entitled to make a small extra charge for the water so used, in addition to the charge of 5 per cent. upon the rateable value of the house, upon the ground that the water was used for other than "domestic purposes" within the meaning of S. 25 of the Metropolitan Water Board (Charges) Act, 1907:

Held that, as the use of the water was in its nature domestic, the supply was for "domestic purposes" within the meaning of S. 25, and the fact that the use of the water was ancillary to the catering business carried on in the house or that the existence of the business necessitated an increased supply for domestic purposes did not make it a supply for the purposes of the business; and that, therefore the water board were not entitled to make the extra charge. *Metropolitan Water Board v. Avery*, (1913) 2 K. B. 257. Affirmed on Appeal (1914) A. C. 118.

Caution.—Where the provisions of English general or special Waterworks Acts differ from the provisions of the Punjab Municipal Act, the above authorities will have to be applied with some care.

Water for repairs.—Water used for repairs of a house is not used for "domestic purposes." 23 I. C. 499.

Waste water.—This may be used for the purposes of gardening as it cannot be used a second time for domestic purposes. 29 I. C. 830.

Arrange to supply—Written contract under Ss. 46 & 47.—No written contract is necessary and though the supply results in the levy of a contractual charge, Ss. 46 and 47 of the Act do not apply to such an arrangement. Cf. 1923 Sindh 1. Also *see* 57 I. C. 718.

Payment at such rates, etc.—This rate is not a tax and formalities for imposing a tax need not be observed when imposing rate and the levy of such rate cannot be declared illegal because the formalities laid down in S. 62 of the Act have not been carried out. Water rate under S. 98 is not a tax but a contractual charge. Cf. 1923 Sindh 1.

Note.—Instead of water rate municipalities are empowered to levy a water tax. In that case the formalities prescribed under S. 62 will have to be followed.

Water rate—Where water rate is levied as a tax its rate cannot be altered without sanction of the Government. 1926 Sindh 130; 92 I. C. 136.

In such quantities as it deems reasonable.—The quantity fixed for free supply need not be constant but may be variable according to the circumstances of each house. Cf. 1926 Mad. 281; 91 I. C. 7.

Limitation—Disconnection.—Ss. 97-99 refer to the duty of the board to allow the owner to connect his house for the purpose of obtaining water from the main. If, therefore, the connection is cut off and the owner is prevented from obtaining water from the main pipe by means of his connection pipe, there is a continuing breach giving rise to continuing cause of action inasmuch as the owner is continually prevented from connecting his house with the main pipe. The duty of the board is a continuing duty and the continuing breach of it gives cause of action to owner from day to day. 1929 All. 870; 118 I. C. 713.

Supply of water for other than domestic purposes.

98. (1) The committee may supply water for any purpose other than a domestic purpose, on receiving a written application specifying the purpose for which such supply is required and the quantity likely to be consumed.

(2) For all water supplied under sub-section (1) payment shall be made at a rate not less than the rate prescribed under sub-section (2) of section 97.

(3) The committee may withdraw such supply at any time if it should appear necessary to do so in order to maintain a sufficient supply of water for domestic purposes.

Notes.

This section was newly introduced and has now been amended by S. 34 of Act, III of 1933.

Analogous Law:—

S. 294, Bengal District Municipal Act, 1884.	S 170, Madras City Municipal Act, 1919.
S. 301, Bengal Municipal Act, XV of 1932.	S. 132, Madras District Municipal Act, V of 1920.
S. 315, Behar and Orissa Municipal Act, 1922.	S 232, U. P. Municipalities Act, 1916,
Ss. 222 & 223, Calcutta City Municipal Act, III of 1923.	<i>English Law:—</i> S. 65, Public Health Act, 1875.

Recent changes.— Before amendment the rates for domestic and non-domestic purposes could not vary. Now the rates for non-domestic purposes may exceed the rates for domestic purposes but should not be less, though they may be equal to, rates for domestic purposes.

Delegation.— Powers under the section can be delegated See S. 33 of the Act.

99. Where an application under section 97 or section 98 has been received, all necessary communication-pipes and fittings shall be supplied by the committee and the work of laying and applying such communication-pipes and fittings shall be executed by municipal agency under the committee's orders; but the cost of making any such connection and of all communication-pipes and fittings so supplied and of all works so executed, shall be paid by the owner or the person making such application. The committee may either provide a meter, charge rent for the same or may require the owner or applicant to provide a meter of such size, material and description as it shall approve.

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(2) Notwithstanding anything in sub-section (1) the committee may require any owner or person applying for a supply of water to provide all communication-pipes and fittings and to carry out at his own cost under its supervision and inspection all the work of laying and applying such communication-pipes and fittings.

Notes.

This section is new. Cf. Ss. 272 and 276 of Bombay Act, III of 1884.

Executive Officers Act.—The functions vesting in the committees under the section shall *not vest in committees* but vest in the executive officers in municipalities to which the Executive Officers Act has been applied.

Analogous Law:—

Ss 301-2, Bengal District Municipal Act, 1884.

S. 303, Bengal Municipal Act, XV of 1932

S. 318, Behar and Orissa Municipal Act, 1922.

S. 91 (1) (b), Bombay Municipal Boroughs Act, 1925.

S. 71 prov. (a), Bombay District Municipal Act, III of 1901.

S. 277, Bombay City Municipal Act, III of 1888.

Ss. 224-5, Calcutta City Municipal Act, III of 1923.

S. 130, Madras District Municipal Act, V of 1920.

S. 234, U. P. Municipalities Act, 1916.

Liability of committee for defects in service pipe.—A water company under the provisions of their special Act (which incorporated the Water Works Company Acts 1847 and 1863) had power to lay down, repair, and maintain (*inter alia*) pipes and all other works necessary for supplying water within the limits of their Act.

At the request and expense of the owner of a house the company laid down a service pipe leading from their main under the street into the house, in which they placed a stop-cock for the purposes of regulating the supply of water. This stop-cock was protected by a cover of guard box let into the pavement, which was provided with a lid or flap. Owing to the hinge of the lid or flap being out of repair, it projected above the pavement and the plaintiff while passing along the street tripped over it and sustained injury. The apparatus could not be repaired without being removed or removed without breaking up the pavement. The jury found that there was negligence on the part of those who were liable for the repairs of the hinge:

Held, without deciding the question whether the apparatus belonged to the company or the owner of the house, that the company, who alone had power to break up the street for the purpose of repairing the guard-box were responsible for its repair, and therefore liable in respect of the injuries sustained by the plaintiff. *Chapman v. Fylde W. W. Co.* (1894) 2 Q. B. 599.

Obligation of owner or occupier to give notice of waste of water.

100. Any owner or occupier of any building or land, in or on which water supplied under this Act is misused from negligence or other circumstances under his control, or used without permission in excess of the quantity fixed under section 97 or section 98, or in which the pipes, mains or other works are out of repair to such an extent as to cause waste of water,

shall, if he has knowledge thereof, be bound to give notice of the same to such officer as the committee may appoint in this behalf.

Notes.

This section is new.

Executive Officers Act.—Notice to be given or tendered to the committee shall not be given or tendered to committees but shall be given or tendered to the executive officer in municipalities to which the Executive Officers Act has been extended.

Analogous Law:—

Ss 298, & 299, Bengal District Municipal Act, 1884.

S. 305, Bengal Municipal Act, XV of 1932.

S. 321, Behar and Orissa Municipi-

pal Act, 1922.

S 284, Bombay City Municipal Act, III of 1888.

Ss. 233 & 236, Calcutta City Municipal Act, III of 1923

101. If any person whose premises are supplied with water neglects to pay the water tax, or any sum payable under section 97 or section 98 when due or to give notice as provided in the last preceding section, or wilfully or negligently misuses or causes waste of water, the committee may cut off the supply of water from the said premises.

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The provision is new. Government has not be given power to cut off in cases contemplated under S. 81-A.

Executive Officers Act.—Notice to be given or tendered to the committee shall not be given or tendered to committee but shall be given or tendered to the executive officer in municipalities to which this Act has been extended.

Powers under this section shall not be exercised by committee but by executive officer in such municipalities

Analogous Law:—

S. 297, Bengal District Municipal Act, 1884.

S. 309, Bengal Municipal Act, XV of 1932.

S. 317, Behar and Orissa Municipal Act, 1922.

S 299, Bombay City Municipal Act, III of 1888.

S. 245, Calcutta City Municipal Act, III of 1923.

S 172, Madras City Municipal Act, 1919.

S. 134, Madras District Municipal Act, V of 1920.

Delegation.— Powers under this section can be delegated under S. 33.

Wilful misuse.—Use of water for non-domestic purposes when it has been supplied for domestic purposes will be misuse.

The provision being penal should be strictly construed. When water is misused without the knowledge or sanction of the consumer the supply cannot be cut off. Cf. 23 I. C. 499.

Waste of water.—Plaintiff, a house-owner in Surat, brought a suit against the Surat City Municipality praying for an injunction restraining the municipality from cutting off the water supply which had been provided for him under certain rules in force in the year 1898. The municipality as defendants contended that under rules which they had made in 1905 they were entitled to cut off the water connection with plaintiff's house: *Held* the plaintiff was entitled to succeed as under the rules so long as the plaintiff occupies a house not inhabited by more than three families, he was entitled to the water supply which he had heretofore enjoyed so long as he had not rendered himself liable to have that water supply cut off under any of the rules.

The municipality contended that they were entitled to cut off the water supply under the provisions of rule 4 (f) (3) since water had been allowed to run to waste by being used by families of tenants who were not of the family of the plaintiff; but the High Court held that the user for the legitimate household purposes by more than one family in the house was not waste within the definition in that rule. The application of the words "run to waste" depends upon the construction of the definition of "domestic purposes" contained in the first rule and the term domestic purposes mean nothing more or less than legitimate household purposes. 32 Bom. 460.

Neglects to pay water tax or water rate.—There is no power in the municipal committees to cut off water supply for refusal to pay other taxes.

Under rule 245, Surat Municipal Rules, the management of the Surat Municipality sent one consolidated bill for various rates, including water rate. The plaintiff refused to pay the consolidated bill. He tendered merely that part of the bill which related to the water charges and to one other item. The municipality declined to allow him to pick and choose in this way and they next proceeded to cut off his water supply. Plaintiff sued for a mandatory injunction to connect water supply and for damages:

Held, that the municipality cannot cut off the water supply because charges other than water charges were not paid.

Held, further, that the plaintiff should be given a mandatory injunction without prejudice to future circumstances.

Held, also, that the plaintiff is entitled to damages as the municipality were acting in excess of their legal powers. 1927 Bom. 640; 29 Bom. L. R. 1465, 106 I. C. 147.

102. For the purpose of providing or maintaining the water supply or of making and maintaining communications or connections with the mains, or generally for the purposes of this chapter, the committee shall have all powers which are conferred upon it in respect of drainage and the supply of gas by sections 132 to 140.

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Analogous Law.—*Cf.* Ss. 290-291 of Bengal Act, III of 1884; S. 146 of Madras Act, IV of 1884; S. 235 of U. P. Act, II of 1916; S. 54 of Public Health Act, 1875.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by the executive officer in municipalities to which the Executive Officers Act has been extended.

103. (1) Whenever it appears to the committee or to the local Government to be desirable to require the owners of buildings or lands situate within the limits of the whole or any part of the municipalities of Simla, Dharamsala, Dalhousie and Murree to make suitable provision for the storage and conservation of rain-water for use in flushing drains and for any purposes other than for the purpose of being used as drinking water, such committee, if so required by the local Government, shall, and in any other case, may, with the previous sanction of the local Government, by public notice direct accordingly.

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(2) Every notice given under sub-section (1) shall state—

- (a) the extent of the local area within the limits of which the owners of buildings and lands are to make suitable provision for the storage of rain-water ;
- (b) the manner in which the cubic capacity of the storage accommodation to be provided by such owners is to be fixed, that is whether the extent of such capacity is to be regulated by reference to the area of the land, the size of the building, the number of occupants or the estimated rental value thereof or by any two or more of these methods ;
- (c) the design, materials, situation and construction of the reservoirs or other storage accommodation to be provided ;
- (d) the mode of collecting, storing, preserving from pollution and in a pure state and using the rain-water to be collected and stored ; and
- (e) the time within which the requirements of the notice are to be complied with.

Notes.

This provision is new and provides for storage and conservation of rain-water for purposes detailed in the section.

Public notice. See S. 218 of the Act.

Non-compliance.—Non-compliance with the provisions of the public notice is punishable under S. 219.

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104. The committee may, and, if so required by the local Government, shall, make provision for the supervision of the construction, and for the inspection of the storage reservoirs and all other works in any manner relating thereto or connected therewith, and may do all acts and things which may from time to time be necessary for the purpose of ensuring—

- (a) that the storage reservoirs and other works, as aforesaid, are constructed and carried out, as the case may be, in accordance with the requirements of the notice given under the preceding section ; and
- (b) that all such reservoirs and other works are of sufficient strength and durability, and may cause any such reservoirs or other works as do not comply with the requirements of the notice or are unsuitable or insecure, to be removed and reconstructed or replaced to the satisfaction of the committee.

Notes.

This also is a new provision. The committee is empowered to enforce compliance with direction given in the public notice and failure to comply with the notice will be punishable under S. 219.

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105. The Committee may, by notice, require the owner or occupier of any building or land in respect of which a reservoir for the storage and conservation of rain water has been provided under section 103 to repair, alter or put in good condition the said reservoir.

Notes.

This is a new section.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—*Vide* S. 33 (a) and (b).

CHAPTER IX.

POWERS FOR SANITARY AND OTHER PURPOSES.

Bathing and washing places.

106. (1) The committee may set apart suitable places for the purposes of bathing, and may specify the times at which, and the sex of the persons by whom, such places may be used and may also set apart suitable places for washing animals or clothes, or for any other purpose connected with the health, cleanliness or comfort of the inhabitants; and may, by public notice, prohibit bathing, or washing animals or clothes, in any public place not so set apart, or at times or by persons other than those specified, and any other act by which water in public places may be rendered foul or unfit for use, and may charge fees for the use of such places by any specified class or classes of persons or by the public generally.

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(2) The committee may fix, by notice, places at which articles of clothing, bedding, or other articles which have been exposed to infection shall be washed, and no person shall wash any such article at any place not so fixed.

Notes.

S. 96 of the old Act. The provision as regards levy of fees is new, so is the 2nd clause.

Analogous Law:—

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| S. 199, Bengal District Municipal Act, 1884. | S. 107, Burma Municipal Act, III of 1898 as amended. |
| S. 348, Bengal Municipal Act, XV of 1932. | S. 377, Calcutta City Municipal Act III of 1923. |
| S. 227, Behar and Orissa Municipal Act, 1922. | S. 137, Central provinces Municipal Act, II of 1922. |
| Ss. 61 (g), 165, 165-A, 166, Bombay Municipal Boroughs Act, 1925. | Ss. 266, 268 & 291, Madras City Municipal Act, 1919. |
| Ss. 48 133 & 134, Bombay District Municipal Act, III of 1901. | Ss. 228-231, Madras District Municipal Act, V of 1920. |
| Ss. 251-A, 388, Bombay City Municipal Act, III of 1888. | S. 118, Rangoon City Municipal Act, 1922. |
| | S. 286, United Provinces Municipalities Act, 1916. |

Preliminary Note.—This Chapter and Chapter X are very important and deal with what may be called matters concerning public health of the inhabitants of the municipalities. The various regulations and provisions in these chapters are enacted under what is called the police power of the State in American treatises on municipal corporations. Thus Dillon in his "Law of Municipal Corporations" says on pp. 554 555:—

“Many of the powers exercised by municipalities fall within what is known as the police power of the State, and are delegated to them to be exercised for the public good. Of this nature is the authority to suppress nuisances, preserve health, prevent fires, to regulate the use and storing of dangerous articles, to establish and control markets, and the like. But it may here be observed that every citizen holds his property subject to the proper exercise of this power, either by the state legislature directly, or by public or municipal corporations to which the legislature may delegate it.” Laws and ordinances relating to the comfort, health, convenience, good order, and general welfare of the inhabitants are comprehensively styled “Police Laws or Regulations.”—It is well settled that laws and regulations of this character, though they may disturb the enjoyment of individual rights, are not unconstitutional, though no provision is made for compensation for such disturbances. They do not appropriate private property for public use, but simply regulate its use and enjoyment by the owner. If he suffers injury, it is either *damnum absque injuria* or, in the theory of the law, he is compensated for it by sharing in the general benefits which the regulations are intended and calculated to secure. The citizen owns his property absolutely, it is true; it cannot be taken from him for any private use whatever, without his consent, nor can it be taken for any public use without compensation; still he owns it subject to this restriction, namely, that it must be so used as not unreasonably to injure others, and that the sovereign authority may, by police regulations, so direct the use of it that it shall not prove pernicious to his neighbours, or the citizens generally. These regulations rest upon the maxim, *salus populi suprema est lex*. This power to restrain a private injurious use of property is essentially different from the right of eminent domain. It is not a taking of private property for public use, but a salutary restraint on a noxious use by the owner, contrary to the maxim *sic utere tuo ut alienum non laedas*.”

As regards the function of bye-laws the same learned author on p. 994 remarks:—

“We have already discussed the general nature and scope of the police power of the State and the limitations thereon. The natural and appropriate, although not the exclusive, function of ordinances is in legislation by the people of the locality, or their duly constituted representatives for the conduct or government of the municipality and its inhabitants. Such legislation usually relates to the exercise of the police power delegated to the municipality by the legislature, and is the means by which the munici-

pality exercises the powers of restraint over the inhabitants and the use of property within the territorial limits, which are confided to the municipal government for the general good of the city and its inhabitants. The suppression of nuisances, the preservation of the public health, the prevention of fires, the regulation of trades and occupations and of the use and storage of dangerous articles, the establishment and control of markets, the suppression of disorderly conduct and breaches of the peace and other similar matters, when regulated, controlled, or directed, by ordinances, are the result of the exercise by the municipality of the police power of the State under a delegation thereof by statute or by charter. The limitations of the police power have never been defined, and it is probable that no general limit can be placed upon it other than the requirement that its exercise must be confined to those matters which have a real and substantial relation to the public welfare."

Exercise of police power and jurisdiction of Courts.—A municipality through the exercise of this power has the right to control and regulate the conduct of the citizens and the use of their property so long as such regulation and control is for the purpose of protection and care of life and property. While the legislature may prescribe (1) over what subjects the municipality shall exercise the police power, (2) in what mode or manner it shall be exercised, and (3) what officer or department shall perform the functions, a general grant of the police power leaves it to the discretion of the municipality when how and by whom it will exercise the power. Where the power has been properly delegated, courts will not interfere in its exercise except where there has been a gross abuse by the municipal authorities of the discretion which it is held they must possess because of their greater knowledge of the needs of the municipality and the extent of the protection afforded either to the public or the licensees by the exaction of the license. The legislature has confided to the municipality and the municipality alone, the duty of deciding what measures within its legal powers are for the public convenience, and its discretion is not subject to control by the courts (22 Bom. 230). The power must be exercised as given, this rule applying to amount of fee and conditions relating to it (28 Mad. 520). The Municipal Act should not be used for the purpose of interfering in any way with the rights of private ownership beyond those limited powers which the corporation has obtained by statute for the necessary protection of the public and the enforcement of proper sanitation (8 I. C. 530). The power must not be exercised arbitrarily, irregularly or tyrannically. The usual mode of exercising police functions is by the enact-

ment of bye-laws or ordinances of regulation or prohibition, the former usually prescribing fees and licenses and the latter penalties for violation of the ordinances. This power being a power delegated to a municipal corporation by the State must be plainly conferred by the legislature. If there is any doubt, it will not be held to exist. While power to license includes power to regulate power to regulate does not include power to prohibit or suppress; and ordinances or bye-laws of prohibition enacted under power of regulation only are *ultra vires* and void. Power to restrict and regulate, however, carries with it the power to prohibit; and the power to remove includes the power to prevent—*See also 44 Mad. 156.*

The power to license and regulate a lawful and necessary business will not give the corporation the power to make contracts which create or tend to create a monopoly. Monopolies are odious to the law. A monopoly exists when the sale of any merchandise or commodity is restrained to one or to a certain number; and it has three inseparable consequences, the increase of the price, the badness of the wares and the impoverishment of others. All contracts in restraint of trade are also void. A bye-law which is in restraint of trade is illegal, while, one which is a mere regulation of trade is legal. Dillon "Municipal Corporations" p. 1011.

Necessity of a definite notice.—Some of the provisions require a notice before the owner or occupier can be prosecuted for the nuisance. The notice must be definite and in terms of the section under which it is issued. Most of the sections do not fix any time for compliance and in such cases the notice must give such time for compliance as is reasonably sufficient. The courts will have power to decide whether the time given for compliance is sufficient or not. *See S. 214 and S. 219 (2) of the Act.*

Section 106.—This section regulates the use of bathing and washing places and empowers committees to provide facilities for promoting cleanliness of persons, animals and clothing for the inhabitants of their respective municipalities. Setting apart does not necessarily mean "provide." The committees may use existing facilities in the municipal area and may set apart these for purposes of the section and prohibit the use of other places not so set apart. In case there are no available facilities, the committees may acquire land for the purpose and provide fitting bathing and washing facilities on such land. Unless fitting places for bathing and washing have either been set apart or provided, it cannot make any prohibition. Private bathing and washing places are outside the scope of the section. Such places can only be

controlled if they are a nuisance under some other provision of this chapter.

Liability for wife's acts. — A person cannot be convicted under this section on account of his wife having washed some dirty clothes if it appeared that he had simply told his wife to wash the clothes without saying where they were to be washed. Rat. Ur. Cr. C. 399 (1888).

107. (1) The committee may by public notice order and, if so directed by the local Government, shall within one month of the notification of such direction be deemed to have ordered, any burial or burning ground situate within municipal limits or within one mile thereof which is certified by the Medical Officer of Health to be dangerous to the health of persons living in the neighbourhood to be closed, from a date to be specified in the notice, and shall in such case, if no suitable place for burial or burning exists within a reasonable distance, provide a fitting place for the purpose.

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(2) Private burial places in such burial grounds may be excepted from the notice, subject to such conditions as the committee may impose in this behalf:

Provided that the limits of such burial places are sufficiently defined, and that they shall only be used for the burial of members of the family of the owners thereof.

(3) No burial or burning ground, whether public or private, shall be made or formed after the commencement of this Act, except with the sanction in writing of the committee which shall not be granted unless the Medical Officer of Health has certified in writing for the information of the committee that such burial or burning ground is not prejudicial to public health:

Provided that no such burial or burning ground shall be made or formed, except with the sanction of the local Government.

(4) Should any person, without the permission of the committee, bury or burn or cause, or permit to be buried or burnt any corpse at any place which is not a burial or burning-ground or in any burial or burning ground made or formed contrary to the provisions of this section, or after the date fixed thereunder for closing the same, he shall be punishable with fine which may extend to fifty rupees.

Notes.

S. 101 of the old Act. Amendment Act, II of 1923, had further amended clauses 1 and 3. These clauses have now been further amended by Act, III of 1933.

Recent changes.—Sub-sections 1 and 3 have been inserted by S. 35 of the Punjab Amendment Act, III of 1933, for sub-sections 1 and 3 of the original S. 107. The Government can now compel municipal committees to exercise powers under S. 107.

Analogous Law:—

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| Ss. 254, 258 & 274, Bengal District Municipal Act, 1884. | Ss. 457—462, Calcutta City Municipal Act, III of 1923 |
| Ss. 437 & 439, Bengal Municipal Act, XV of 1932. | Ss. 146 & 147, Cantonment Act, II of 1924 |
| Ss. 248 & 252, Behar and Orissa Municipal Act, 1922. | Ss. 138 & 192, Central Provinces Municipal Act, II of 1922. |
| S. 185, Bombay Municipal Boroughs Act 1925. | Ss. 318—324, Madras City Municipal Act, 1919. |
| S. 150, Bombay District Municipal Act, III of 1901 | Ss. 278—280, Madras District Municipal Act, V of 1920. |
| Ss. 435—438, Bombay City Municipal Act, III of 1888. | Ss. 145 & 147, Rangoon City Municipal Act, 1922. |
| S. 81, Burma Municipal Act, III of 1898 | S. 285, U. P. Municipalities Act, 1916. |

Necessity of Powers.—The public health, comfort and convenience are concerned in the proper regulation of burials and cremations; and the evils resulting from its neglect are especially to be apprehended in the crowded population of cities. Hence powers have been rightly given to committees to regulate such matters. S. 107 empowers committees to close existing burial and burning grounds and to provide fitting places for such grounds in place of those closed. No new burial or burning ground can be established after the commencement of the Act. The power under the section is a continuing one and can be exercised from time to time as the occasion arises.

Under clause (2) private burning and burial-grounds may be excepted from the orders under clause (1). Burial or burning in such excepted places against the conditions imposed by committees is not made punishable. This may, however, be covered by S. 219.

Under clause (4) permission may be given on terms. When permission is given on terms, breach of the terms will be punishable under S. 219.

Besides this section the committees have under S. 188 (e) (v) further powers of regulating the use and management of burial and burning grounds by framing bye-laws.

S. 108 empowers committees to restrict routes for the removal of corpses to burial and burning grounds.

Requisites of a valid notice.—The municipal authorities issuing a notice prohibiting the use of a burial ground must definitely specify the point of time from which the period fixed by them is to run. A notice in the following terms:—“no person shall after two months bury or permit to be buried any corpse in such and such burial ground” is not valid as it does not specify the time from which two months were to run. 25 Cal. 492.

Fitting places.—Whether a place is a fitting one or not will depend on the requirements of the community regarding the disposal of corpses and the general necessities of the cases. The question was considered in the following case bearing on S. 392 of the City of Madras Municipal Act — a section somewhat corresponding to the present section:—

In 1896 the Municipal Commissioners of Madras City acquired land close to plaintiff's land and factory and opened a burial and burning ground therein. The plaintiff alleged that his premises had in consequence become unhealthy, insanitary and unfit for residential purposes, that he had been unable to work his factory and that his property had deteriorated in value. The plaintiff consequently sued for damages and for an injunction restraining the municipality from using the said land as a burial and burning ground. No negligence was alleged regarding the manner in which the burial ground had been used. It was shown that the burning ground was to a certain extent a source of nuisance to any one who occupied plaintiff's premises and that the market value of plaintiff's property had depreciated: *Held* that the mere fact that a neighbouring landowner has sustained damages from the establishment of the burial ground does not show that the site selected was not convenient and fitting. The object is to provide a convenient and sanitary means of disposing of corpses in accordance with the general sentiments of the community; that provision is absolutely necessary and it must necessarily be attended with some inconvenience.

It was also *held* in this case that facts disclosed did not constitute actionable nuisance and even if such nuisance had been proved, the municipality was protected. 25 Mad. 118.

Closing of burning ground.—The committees cannot close a burning ground merely because in their opinion the burning of dead bodies was offensive. The committees can interfere only when it appears to them upon the certificate of Medical Officer of Health that a cremation ground is in such a state as to be dangerous to the health of the persons living in the vicinity thereof. Cf. 19 W. R. 309.

Cremation of dead bodies is not a public nuisance.—

When persons entitled to use a particular spot for the communal purpose of cremation, use it for that purpose in a manner neither unusual nor calculated to aggravate the inconvenience necessarily incident to such an act, as it is generally performed in this country it must be admitted that he does what is perfectly lawful. Such an act done, not only in the exercise of a right of which the people of this country are generally very tenacious but also in the discharge of a serious duty, would not amount to a public nuisance punishable under S. 290 of the Penal Code. 19 Mad. 464.

Private cremation ground—Criminal Procedure Code.—

Although a burning ground may not itself be a "nuisance" within the meaning of S. 133, Cr. P. C., still a magistrate will have jurisdiction to take action under that section if it is shown that such a ground is in such an offensive state or that cremation is carried upon it in such offensive manner as to be a source of injury, danger or annoyance to persons living in the vicinity. A private proprietor may be guilty of acts done on his private property which may give rise to a public nuisance; the owner of a cremation ground may be held to create a nuisance if he allows the cremation of bodies upon that ground to be so performed as to annoy or endanger the lives and properties of persons living in the neighbourhood. 25 Cal 425.

Sale of fuel at burning ground. There is no specific provision for licensing sale of fuel in burning grounds. The bye-laws under S. 188 (e) (v) may be so framed as to regulate the sale of fuel at such places. In Bengal there is a specific provision (S. 260-A of Act, III of 1884) enabling committees to license the sale of fuel. But the presence of such provision was held not to give power to create exclusive rights in favour of any person to sell fuel for burning dead bodies. Cf. 6 I. C. 864 or 14 C. W. N. 1057.

Burial ground a sacred place. By the custom of the country, founded on a sentiment which may almost be described as universal, the ground in which human relics are interred is regarded as for ever sacred. The members of the family of the dead are in the habit of performing certain religious service at their tombs. The ownership of the soil may be vested in others, but the permission to bury in the land, granted, as it must be, subject to the custom of the community carries with it the right to perform all customary rites. 26 Bom. 198; 3 Bom. L. R. 771.

Burial in a prohibited place. Beyond a fine for non-compliance with the provisions of the section there is no power to abate the nuisance created by burial or

cremation at a place not the burial or burning ground, fixed or provided by committee. In Lyallpur a person was buried in the heart of the city in his own residence inspite of the orders of the municipal committee. The committee found itself powerless to do anything. Exhumation was only possible under the Criminal Procedure Code under certain conditions. Even exhumation cannot contemplate the burial at any other place than the one from which the body is exhumed. Even the provision of punishment seems to be inadequate. In the Lyallpur case the responsibility could not be fixed upon any body.

Recourse to preventive action under the Specific Relief Act is possible but illusory. There is hardly any time to enable committees to resort to such a remedy.

108. (1) The committee may, by public notice, pre- Removal
corpses.
scribe routes for the removal of corpses to burial or burning places.

(2) Whoever carries a corpse along a route prohibited by the committee, or in a manner likely to cause annoyance to the public, shall be punishable with fine which may extend to ten rupees.

Notes.

Ss. 102 and 167 of the old Act.

Analogous Law:—

Ss. 118 & 149, Cantonment Act, II of 1924.	S. 241, Madras District Municipal Act, IV of 1884.
Ss. 139 & 193, Central Provinces Municipal Act, II of 1922	S. 113, U. P. Municipalities Act, 1900.

Dangerous animals.

109. (1) The committee may—

(a) authorize any person—

(i) to destroy, or cause to be destroyed or confine, or cause to be confined, for such period as the committee may direct, any dog or other animal suffering, or reasonably suspected to be suffering from rabies, or bitten by any dog or other animal suffering or suspected as aforesaid;

(ii) to confine, or cause to be confined, any dogs found wandering about streets or public places without collars or other marks distinguishing them as private property and charge a fee for such detention and destroy or otherwise dispose of any such dog if it is not claimed within one week, and the fee paid;

Disposal
mad a
stray dogs.

(b) issue a temporary or standing order that any dogs without collars or other marks distinguishing them as private property, found straying on the streets or beyond the enclosures of the houses of the owners of such dogs may be destroyed and destroy or cause them to be destroyed accordingly. Public notice shall be given of any such order.

(2) No damages shall be payable in respect of any dog or other animal destroyed or otherwise disposed of under this section.

Notes.

S. 138 of the Act with considerable changes.

Analogous Law:—

S. 213, Bengal District Municipal Act, 1884.

S. 465, Bengal Municipal Act, XV of 1932.

Ss. 348-349, Behar and Orissa Municipal Act, 1922.

S. 107, Bombay Municipal Boroughs Act, 1925.

S. 119 (3), Cantonment Act, II of 1924.

S. 131, Central Provinces Municipal Act, II of 1922.

S. 281, Madras City Municipal Act, 1919.

S. 241, Madras District Municipal Act, V of 1920.

Ss. 249-51, U. P. Municipalities Act, 1916.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Control of animals.—Ss. 109 to 112 deal with the movements of dangerous animals within municipal limits. S. 109 deals with dogs and other animals suffering from rabies. S. 110 and S. 108 (f) specially deal with control of dogs, while Ss. 111 and 112 deal with camels, bears and elephants. There are no other provisions dealing with other dangerous animals as these are very rarely found domesticated. S. 289, I. P. C., will afford sufficient protection against keepers of other dangerous animals. Keeping of swine and other animals so as to be injurious to the health of the neighbours is provided under S. 147, while stables for horses and cows and sheep and goat enclosures can be regulated under S. 188 (h).

Nuisance arising from keeping animals.—The keeping of any animal in such a position or in such circumstances as to cause material discomfort or annoyance to the public in general and to any person in particular is a nuisance. If it affects the public generally, it is a public nuisance. The keeping of any animal so as to be a nuisance or injurious to health is a nuisance capable of being abated or punished by

summary proceedings. It is not necessary that the annoyance should amount to injury to health. *Banbury Sanitary Authority v. Page* (1881) 8 Q. B. D. 97.

Delegation.—Powers under S. 109 (1) can be delegated; *vide* S. 33.

110. Whoever, being the owner or person in charge of any dog, neglects to restrain it so that it shall not be at large in any street without a muzzle,

Suffering
dogs to
at large.

(a) if such dog is likely to annoy or intimidate passengers,
or

(b) if the committee has by public notice during the prevalence of rabies directed that dogs shall not be at large without muzzles

shall be punishable with fine which may extend to twenty rupees.

Notes.

S. 163 of the old Act. Clause (b) is new.

Analogous Law.—S. 157 of Bombay Municipal Boroughs Act 1925. *Cf.*, S. 250 of U. P. Act, II of 1916.

Delegation.—Powers under S. 110 can be delegated under S. 33.

111. Whoever, being in charge of any elephant, camel or bear, omits on being requested to do so to remove as far as may be practicable his elephant, camel or bear, to a safe distance on the approach of a horse, whether ridden or driven, shall be punishable with fine which may extend to twenty rupees.

Control
elephants
camels,

Notes.

S. 161 of the old Act.

Analogous Law.—*Cf.* 254 of U. P. Act, II of 1916; S. 350 of Bengal Act, III of 1884; S. 202 of C. P. Act, II of 1922.

112. Whoever, contrary to any orders of the committee, takes an elephant along a street shall be punishable with fine which may extend to twenty rupees.

Taking
elephant
along pub-
roads.

Notes.

S. 162 of the old Act.

Analogous Law.—S. 166 of N. W. P. and Oudh Act of 1900.

Dangerous or insanitary buildings or places.

113. Should any building, or any well, tank, reservoir, pool, depression or excavation be, for want of sufficient repair, protection or enclosure, dangerous to the persons dwelling or

Power to r-
quire build-
ings, well-
tanks, etc.,
be secured,

working therein or in the neighbourhood or to persons passing by, the committee may, by notice require the owner or occupier thereof to repair, protect, or enclose the same; and, should it appear to it to be necessary in order to prevent imminent danger it shall forthwith take such steps to avert the danger as may be necessary.

Notes.

S. 127 of the old Act.

Failure to comply with the notice would be punishable under S. 219 of the Act. Should the owner or occupier fail to comply with the notice, the committee can also do the work themselves under S. 220 and recover the costs under S. 222.

Delegation.—Powers under this section can be delegated under S. 33.

Analogous Law :—

S. 209, Bengal District Municipal Act, 1884.	1924.
S. 359, Bengal Municipal Act, XV of 1932.	S. 124, Central Provinces Municipal Act, II of 1902.
S. 194, Behar and Orissa Municipal Act, 1922.	Ss. 258 & 260, Madras City Municipal Act, 1919.
S. 354, Bombay City Municipal Act, III of 1888.	S. 220, Madras District Municipal Act, V of 1920.
S. 103, Burma Municipal Act, III of 1898.	S. 157, Rangoon City Municipal Act, 1922.
S. 126, Cantonment Act, II of	S. 263, U. P. Municipalities Act, 1916.

Executive Officers Act.—In municipalities to which this Act has been extended the section should be deemed to have been amended as follows, *vide* clause 10 of Schedule II of Executive Officers Act:—

Power to require buildings, wells, tanks, etc., to be secured.

113. Should any building, or any well, tank, reservoir, pool, depression or excavation be, for want of sufficient repair, protection or enclosure, dangerous to the persons dwelling or working therein or in the neighbourhood or to persons passing by, the committee may order the executive officer by notice to require the owner or occupier thereof to repair, protect or enclose the same; and should it appear to the executive officer that the danger to such persons from any such building, well, tank, reservoir, pool, depression or excavation is imminent, he shall forthwith take such steps to avert such danger as may appear to him to be necessary and as may be approved by the president:

Provided that any such action taken by the executive officer under this section shall be reported to the committee at the next following meeting.

Distinction between Sections 113 and 114.—So far as buildings are concerned, S. 113 requires notice to owner or

occupier. Under S. 113 notice can also issue even if the building be dangerous only to persons dwelling or living in it. Under S. 113 the committee has no option. It can only require repairs. S. 114 cannot come into operation, if the building is dangerous only to persons living in it. Under that section the notice can only issue to owners while the committee has the option to require demolition or repairs. To a certain extent the sections overlap each other.

For further Notes see S. 114.

114. Should any building, wall or structure, or anything affixed thereto, or any bank or tree, be deemed by the committee to be in a ruinous state or in any way dangerous, or there be any fallen building or debris or other material which is unsightly or is likely to be in any way injurious to health it may by notice require the owner thereof either to remove the same or to cause such repairs to be made to the building, wall, structure or bank, as the committee may consider necessary for the public safety, and should it appear to be necessary in order to prevent imminent danger, the committee shall forthwith take such steps, at the expense of the owner, to avert the danger as may be necessary.

&c.
ger

Notes.

S. 128 of the old Act.

Recent changes.—The present section has been substituted by S. 36 of Punjab Amendment Act, III of 1933.

Analogous Law:—

S. 210, Bengal District Municipal Act, 1884.
Ss. 364 & 369, Bengal Municipal Act, XV of 1932.
S. 194, Behar and Orissa Municipal Act, 1922.
S. 149, Bombay Municipal Boroughs Act, 1925.
S. 119, Bombay District Municipal Act, III of 1901.
S. 354, Bombay City Municipal Act, III of 1888.

S. 125, Burma Municipal Act, III of 1898.
S. 140, Cantonment Act, II of 1924.
S. 125, Central Provinces Municipal Act, II of 1922.
Ss. 258-9 & 260, Madras City Municipal Act, 1919.
S. 218, Madras District Municipal Act, V of 1920.
S. 157, Rangoon City Municipal Act, 1922.
S. 263, U. P. Municipalities Act, 1916.

Delegation.—Powers under the section can be delegated; *vide* section 33 (a) & (b).

Executive Officers Act.—In municipalities to which this Act is extended S. 114 should be taken to be deemed to have been amended as follows:—

114. Should any building, wall or structure, or anything affixed thereto, or any bank or tree, be deemed by the committee to be in a ruinous state or in any way dangerous, or there

&c.
ger

be any fallen building or *debris* or other material which is likely to be in any way injurious to health, it may order the executive officer by notice to require the owner thereof forthwith either to remove the same or to cause such repairs to be made to the building, wall, structure or bank as the committee may consider necessary for the public safety, and should it appear to the executive officer that the danger from any such building, wall, structure, thing, bank or tree is imminent, he shall forthwith take such steps, at the expense of the owner, to avert the danger as may be approved by the president:

Provided that any action taken by the executive officer under this section shall be reported to the committee at its next following meeting.

Notes.

Note.—The Executive Officers Act amended the original S. 114 as it stood before the present Amendment Act III of 1933 amended it. By S. 6 of the General Clauses Act the amendment effected by the Executive Officers Act must relate to the amended S. 114.

Demolition or repairs.—Notice under this section will not entitle a person served with a notice under S. 114 to effect such changes as amount to erection or re-erection of a building. Nor will the order for demolition entitle the owner to re-erect the building. Proper sanction for re-erection or for repairs amounting to erection or re-erection of a building will have to be obtained.

Sometimes the owners in order to avoid the trouble of obtaining sanction under S. 193 and in cases where they know that re-erection is not possible, in collusion with municipal staff get notices under S. 114 issued to them requiring the re-erection of a dangerous building and under the pretext of this notice re-erect buildings sometimes including projection or other encroachments, the committees have to take precautions against such underhand means.

Failure to comply with the notice is punishable under S. 219.

Owner.—If there are more than one owner, notice to all would seem to be necessary. This will sometimes cause delay, as it is often difficult to find out all the owners of a particular building especially if it is untenanted owing to its dangerous state. Amendment such as that of S. 115 would seem to be necessary to give effective control to committees over such buildings.

Removal and rebuilding of a dangerous wall.—The municipal committee is competent under this section to issue a notice requiring the rebuilding of a dangerous wall or bank

of specified dimension after pulling it down. The renewal of such a dangerous wall and bank, built by the owners or occupier of a building on a hill station as a support to the side, for a more substantial one amounts only to repairs within the provisions of this section. P. R. 13 of 1908 Cr.

Option of repairs.—A notice requiring the removal of a ruinous shed without option of repairing the same is defective. P. R. 18 of 1903 Cr. and 23 of 1905 Cr.

The option of removal or repairs is an option given to the local authority and not to the owner of the building. The owner cannot insist that the notice under S. 114 should give him the option of either removing the building or making full repairs as will remove the danger. The option is given to the local authority of deciding whether, in the circumstances contemplated by the section to exist, the owner should be required to remove the building or whether he should be required to cause sufficient repairs. 52 I. C. 665; 43 Bom. 838.

Public safety.—These provisions are not intended for effecting repairs in houses which may be dangerous to the persons occupying them. The words "public safety" mean the safety of the general public and not of a particular person. Therefore only such repairs can be ordered as may be necessary for the public safety. The safety of the tenant of a bungalow or his guest does not come within its meaning: P. R. 1 of 1906 Cr.; Cf. 20 All. 501. If the safety of the tenant or occupier alone is affected, resort should be had to S. 113.

Jurisdiction of Courts to interfere with orders.—On a prosecution under S. 219 for failure to comply with the notice issued under the section it is open to the Chief Court to see whether the conviction is good and to review the proceedings of the committees. Cf. P. R. 1 of 1906 Cr.

Court's power of interference—dangerous tree.—The magistrate cannot go into the question whether the committee was right in thinking the tree ordered by it to be removed to be dangerous. The magistrate can at most consider whether the tree never appeared to the committee to be dangerous. Where it was proved that the tree was a sloping cocoanut palm which overhung a house and had been reported by the sanitary inspector to be dangerous: *Held* on this evidence a court cannot hold that there were no grounds on which the committee could form an opinion. Whether the committee was justified in forming this opinion is not a matter to be decided by court. 1925 Mad. 584; 90 I. C. 152.

Powers of municipalities under the section—Court's powers of interference with the exercise of such powers.—Under

the corresponding section of the City of Bombay Municipal Act, (S. 355 Act III of 1888) it was held that the primary object of the section is the safety of the public to secure which the commissioners must of necessity be given very wide powers. But it does not follow that those powers can be exercised arbitrarily and without due consideration to the provisions of the section and the rights of the individuals.

In the first place it must appear to the Commissioner* that a structure is in a ruinous condition or likely to fall or in any way dangerous to persons resorting to or passing by such structure. Then the Commissioner* may by written notice require the owner or occupier to pull down, secure or repair such structure. Although the word "appear" in the section does not signify "appear to the eye" the Commissioner's* action when "it appears" is judicial so that he must exercise the discretion in determining what action should be taken, and, whereas in this case, he merely signs a notice sent to him by another officer, such as an engineer, he could not be taken to have complied with the section.

S. 354 applies to all degrees of danger and prescribes various precautionary measures to be taken to prevent injury resulting therefrom, it follows that first the degree of danger must be ascertained and then the appropriate remedy prescribed. It was not suggested in this case that the danger was imminent. The legislature has vested in the municipal Commissioner* a discretion in the matter and the court would not interfere with his exercise of such discretion merely because the object in view might be carried out in some other way. Nor would the court lightly impute to him bad faith. The courts are competent to inquire whether such discretion has been exercised.

It is impossible for the Commissioner* to inspect all structures suspected to be dangerous. Therefore it is a sufficient exercise of his discretion in deciding what structures are dangerous if he appoints a competent person to represent him what structures are dangerous. But if a notice is issued based on the representation of such a person, it is open to the owner to prove that that person has not exercised his discretion or has been actuated by improper motives in prescribing the steps to be taken. In such a case, if the owner can prove to the satisfaction of the court that his house was not in such a dangerous condition as to warrant an order to pull it down, that would be *prima facie* evidence that the person appointed by the Commissioner* had not exercised his discretion. It is open to the Commissioner* to act on the advice of experts as well as through agents, but where the agents and consequently the Commissioner*

* Corresponds to executive officer in the Punjab.

have not exercised proper discretion the Commissioner has the opportunity to remedy this when the owner complains. Although under such circumstances the safety of the public must be considered in preference to the rights of the private individuals, as in the case of imminent danger at all, the aggrieved party is entitled to be heard as a matter of bare justice. 33 Bom. 334, 3 I. C. 361.

Contents of Notice.—A notice under S. 114 of the Municipal Act must specify the portion of the building which, in the opinion of the committee, is in a dangerous condition and should also mention the nature of the repairs to be made.

A notice therefore mentioning the building and calling upon the owner to remove it or execute "sufficient" repairs to such portion of the building as was in a ruinous or dangerous condition was *held* to be bad, disobedience of which was not punishable. 32 I. C. 841; P. R. 9 of 1916 Cr.

The only condition precedent to the valid issue of notice under this section is that it shall appear not to the magistrate but to the committee that the premises are in the condition specified in the section. Where the premises appear to the committee in the condition specified, the notice is validly issued. Non-compliance with such a notice constitutes a complete offence. The magistrate cannot acquit the accused on the sole ground that the premises did not appear to the magistrate in such condition as to justify issue of notice. 34 Bom. 346, 5 I. C. 860.

115. Should the owner, part owner or occupier of any building or land suffer the same to be in a filthy or unwholesome state the committee may, by notice, require him within twenty-four hours to cleanse the same or otherwise put it in a proper state; and thereafter to keep it in a clean and proper state and if it appear to be necessary for sanitary purposes to do so, may at any time by notice direct the occupier of any building to lime-wash or otherwise cleanse the said building inside or outside in the manner and within a period to be specified in the notice.

Clean:
of fil
buildings.
land.

Notes.

Ss. 107 and 113 of the old Act. The words "part owner" have been added by Amendment Act of 1923.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Analogous Law:—

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| S. 362, Bengal Municipal Act, XV of 1932. | S. 264, Calcutta City Municipal Act, III of 1923. |
| S. 235 Behar and Orissa Municipal Act, 1922. | S. 141 Cantonment Act, II of 1924. |
| Ss. 162 & 164, Bombay Municipal Boroughs Act, 1925. | Ss. 270 & 272, Madras City Municipal Act, 1919. |
| Ss. 131 & 395, Bombay District Municipal Act, III of 1901. | S. 235, Madras District Municipal Act, V of 1920. |
| S. 129, Burma Municipal Act, III of 1898. | S. 271, U. P. Municipalities Act, 1916. |

Delegation.—Powers under S. 115 can be delegated, *vide* section 33, clauses (a) & (b).

Notice.—Scope of the section.—Under an analogous provision of the City of Bombay Municipal Act, the municipality issued a notice calling upon the owner of a range of buildings to put it in a proper state by providing ridge ventilation within seven days. The owner failed to comply with the notice and was prosecuted for non-compliance: *Held* that municipality had no power to direct structural alterations and that the notice requiring ridge ventilation to be provided was illegal and the owner by refusing to comply with it committed no offence. When a person asked to cleanse a building or otherwise put a building which is filthy in a proper state, what is meant is that he is to remove the objectionable accidents such as filth and nuisance leaving the essence of the building the same as before. When a notice is required by law it cannot prescribe something which the law itself does not contemplate or involve.

The section leaves it to the owner or occupier to adopt such measures as he pleases to carry out the demand of the committee. It is not open to the committee to prescribe its own measures and deprive the owner or occupier of his option. 8. Bom. 151.

Validity of notice.—Magistrate cannot substitute his own opinion for that of the committee. The only condition precedent to the valid issue of a requisition is that it shall appear not to the magistrate but to the committee that the premises are in the condition specified in the section. Where the premises appear to the committee in the condition specified, the notice is validly issued, and non-compliance with such a notice constitutes a complete offence. The magistrate cannot acquit the accused on the sole ground that the premises did not appear to the magistrate in such a condition as to justify the issue of notice under the section. *Cf.* 34 Bom. 346; 12 Bom. L. R. 126; 5 L. C. 860.

Disputes between owners and tenants.—The Municipal Act is particularly careful to render all enquiries as to the

mutual liabilities or responsibilities of owners and tenants unnecessary and it is obviously impossible to carry on any sort of municipal administration if it were open to the actual occupier of the premises to say that not he but his landlord was the person who is responsible for the nuisance. If the occupier is not inclined to do anything his remedy is clear, that is, to leave the premises. He cannot be allowed to say that although the municipality has declared the land in a noxious condition he is entitled of keeping it in a noxious condition until the municipality has traced the owner of the land and until all disputes pending between the owner and the occupier have been decided. Therefore it is useless for the occupier to plead in court that not he but some one else is responsible under S. 115 of the Act. *Cf.* 1925 Sind 261, 87 I. C. 104.

115-A. The committee may by notice require the owner or occupier of any land on which cattle or other animals are habitually tethered to have the same properly paved or drained or both.

Paving
draining
cattle-sta

Notes.

New section introduced by the Amendment Act II of 1923.

Non-compliance with a notice under this section will be punishable under S. 219.

Analogous Law:—

S. 289, Behar and Orissa Municipal Act, 1922.	S. 115-A, Central Provinces Municipal Act, II of 1922.
S. 399, Calcutta City Municipal Act, III of 1924	S. 283, Madras City Municipal Act, 1919.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under S. 115-A can be delegated, *vide* S. 33, clauses (a) & (b).

116. Should any building, or any part of any building, appear to the committee to be unfit for human habitation in consequence of the want of proper means of drainage or ventilation or any sufficient reason, the committee may, by notice, prohibit the owner or occupier thereof from using the same for human habitation, or suffering it to be so used, until it has been rendered fit for such use to the satisfaction of the committee, [and no such owner or occupier shall inhabit such building or suffer it to be inhabited until the committee shall have

Powers
prohibit
for hu
habitation
buildings
fit for :
use.

informed in writing the owner or occupier that the prohibition has been withdrawn.]

Notes.

S. 132 of the old Act.

Recent changes.—The present section has been substituted by S. 37 of the Punjab Amendment Act, III of 1933, the words within brackets being added.

Analogous Law:—

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|---|--|
| S. 324, Bengal District Municipal Act, 1884. | S. 142, Cantonment Act, II of 1924. |
| S. 366, Bengal Municipal Act, XV of 1932. | S. 122, Central Provinces Municipal Act, II of 1922. |
| S. 236, Behar and Orissa Municipal Act, 1922. | S. 274, Madras City Municipal 1919. |
| S. 163, Bombay Municipal Boroughs Act, 1925. | S. 237, Madras District Municipal Act, V of 1920. |
| S. 131 (2), Bombay District Municipal Act, III of 1901. | S. 156, Rangoon City Municipal Act, 1922. |
| S. 378, Bombay City Municipal Act, III of 1888. | S. 278, U P. Municipal Act, 1916. |
| S. 104, Burma Municipal Act, III of 1898. | <i>English Law:—</i> |
| S. 381, Calcutta City Municipal Act, III of 1923. | S. 97, Public Health Act, 1875. |
| | S. 11, Housing Act, 1925. |

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under S. 116 can be delegated, *vide* S. 33, clause (b).

Comments.—This is a very salutary provision in the Act. Most of the municipalities, however, seldom make use of these powers and if powers under the section are more frequently exercised, committees can do much to improve the sanitary condition of the dwelling houses. In England it is obligatory on local authorities to undertake periodic inspection of dwelling houses and to pass closing orders in respect of all such places which are found to be unfit for human habitation.

Appeal.—Orders under this section are appealable under S. 225.

Appeal to the committee.—*See* Notes under Ss. 114 & 115.

Want of proper ventilation.—Under a similar provision in an English Local Act it was held that a house may be closed as “unfit for human habitation” though it is in itself in fair condition if the proximity of other buildings renders it insufficiently ventilated. *Hall v. Manchester Corp.* (1915) 79 J. P. 385 H. L.

Reasonable satisfaction of the committee.—In the absence of these words in the corresponding section of Burma Act it has been *held* that it is for the magistrate to decide whether the house has been rendered fit for habitation. 7 Cr. L. J. 441.

Under the Punjab Act the magistrate will have no authority to decide whether the house has been rendered fit for habitation.

Owner and occupier.—The owner and occupier cannot be jointly tried for disobedience to notice under this section, as the offence of each is a separate one. 37 Cal. 895.

117. The committee may, by notice, require the owner or occupier of any land to clear away and remove any thick vegetation or undergrowth which may appear to the committee to be injurious to health or offensive to the neighbourhood.

Power
require
to clear
noxious
tation.

Notes.

S. 129 of the old Act.

Analogous Law:—

S 195, Bengal District Municipal Act, 1884.
S 363, Bengal Municipal Act, XV of 1932.
S 239, Behar and Orissa Municipal Act, 1922.
S. 131, Bombay District Municipal Act, III of 1901.
S. 377, Bombay City Municipal Act, III of 1888.

S. 104-A, Burma Municipal Act, III of 1898.
S. 143, Cantonment Act, II of 1924.
S. 127, Central Provinces Municipal Act, II of 1922.
S. 270, Madras City Municipal Act, 1919.
S. 233, Madras District Municipal Act, V of 1920.
S. 283, U. P. Municipalities Act, 1916.

Failure to comply with the notice is punishable under S 219. The committee can also execute the work itself and levy the costs from the person failing to comply with the notice.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under the section can be delegated, *vide* section 33.

Duties of the municipalities.—Under the corresponding section of Bengal Act, III of 1864, the Municipality of Kishanghar, on the opinion of their medical officer that sick,

ness was prevalent in consequence of the jungle with which the town was overgrown, issued 7,000 notices ordering all persons served therewith to clear away their jungle within seven days. They did not enquire into each person's case; that was done by the tax *daroga* and tax-collectors, and after their visits the notices were issued and were served individually. One Womesh Chander Roy disregarded the notice. The municipality carried out the clearance and took steps to recover the expenses. The High Court *held* that the commissioners were not bound like a judicial officer to examine every individual's case or inspect every individual's land; as ministerial officers looking after the health of the town they were qualified to decide upon their medical officer's report and with the aid of their officers whether the jungle with which the town was overgrown was injurious to health and to take the steps which they did take. 7 W. R. 213.

Power to require hedges and trees to be trimmed.

118. The committee may, by notice, require the owner or occupier of any land to cut or trim within three days the hedges growing thereon and bordering on any street, or any branches of trees growing thereon which overhang any street and obstruct the same or cause danger, or which so overhang any well, tank or other source from which water is derived for public use as to be likely to pollute the water thereof, *or are in any way offensive or injurious to health.*

Notes.

S. 130 of the old Act. This is one of the sections which fix the time during which the notice must be complied with.

Analogous Law:—

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| S. 208, Bengal District Municipal Act, 1884. | S. 104-A, Burma Municipal Act, III of 1898. |
| S. 202, Behar and Orissa Municipal Act, 1922. | S. 195, Cantonment Act, II of 1924. |
| S. 148, Bombay Municipal Boroughs Act, 1925. | S. 271, Madras City Municipal Act, 1919. |
| S. 118, Bombay District Municipal Act, III of 1901. | Ss. 219 & 234, Madras District Municipal Act, V of 1920. |
| S. 383, Bombay City Municipal Act, III of 1888. | |

Recent changes.—Words in italics were added by S. 38 of the Punjab Amendment Act III of 1933.

Delegation.—Powers under the section can be delegated under S. 33.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Verbal notice.—A verbal order requiring trees to be trimmed will not do and disobedience of such verbal orders is not punishable. Cf. 50 I. C. 992.

119. The committee may, by notice, require the owner or part owner, or person claiming to be the owner or part owner, of any building or land which, by reason of abandonment or disputed ownership or other cause has remained untenanted and become a resort of idle and disorderly persons or otherwise a nuisance, to secure or enclose the same within reasonable time fixed in the notice.

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Notes.

S. 133 of the old Act.

Analogous Law:—

S. 210, Bengal District Municipal Act, 1884.	S. 123 Central Provinces Municipal Act, II of 1922.
S. 237, Behar and Orissa Municipal Act, 1922.	S. 269, Madras City Municipal Act, 1919.
S. 131, Bombay District Municipal Act, III of 1901.	S. 232, Madras District Municipal Act, V of 1920.
S. 176, Bombay City Municipal Act, III of 1888.	S. 294, U. P. Municipalities Act, 1916.

Delegation.—Powers under this section can be delegated, *vide* S. 33, clauses (a) & (b).

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Failure to comply with notice.—*See* Notes under S. 117.

Public nuisance—Control of municipal committees.—The municipal committees can take action only in cases of nuisances specified under this section or under other sections. It has no power to declare what are public nuisances and to take action in respect of that. 12 C. P. L. R. 16 Cr.

120. (1) If the Medical Officer of Health certifies that the cultivation of any description of crop or the use of any kind of manure or the irrigation of land in any specified manner,—

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(a) in any place within the limits of any municipality, is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood ; or

(b) in any place within or beyond the limits of any municipality is likely to contaminate the water-supply of such municipality or otherwise render it unfit for drinking purposes ;

he committee may prohibit the cultivation of such crops, the use of such manure or the employment of the method of irrigation

so reported to be injurious, or impose such conditions with respect thereto as may prevent such injury or contamination:

Provided that if it is notified by the local Government that the cultivation of such crop, the use of such manure, or the employment of such method of irrigation is prohibited or conditions are imposed with respect thereto, the committee shall be deemed to have ordered such prohibition, or imposed such conditions, and shall issue notices in accordance with the notification:

Provided also that, when on any land to which such prohibition applies the act prohibited has been practised during the five years next preceding the prohibition in the ordinary course of husbandry, compensation shall be paid from the municipal fund to all persons interested therein for any damage caused to them by the effect of such prohibition.

(2) Should any person fail within six months from the date of its service to comply with a prohibitory notice issued under sub-section (1), he shall be punishable with fine which may extend to fifty rupees and with a further fine which may extend to five rupees for every day during which the offence is continued.

Notes.

S. 134 of the old Act.—Certain changes were introduced into the old Act by Act III of 1911 and by the Amendment Act II of 1923. The present section has been substituted by S. 39 of the Punjab Amendment Act, III of 1933.

Cultivation of certain crops or use of manure and irrigation can now be prohibited. The matter is discretionary with committee. The Government can however prohibit these acts and if they are so prohibited by local Government such a prohibition will be deemed to have been made by the committee. Time for compliance has been fixed at six months, in view of the fact that cultivation already taken in hand before issue of notice will require six months to mature.

Analogous Law:—

S. 241, Behar and Orissa Municipal Act, 1922.
S. 135, Burma Municipal Act, III of 1898.

Ss. 136 & 191, Central Provinces Municipal Act, II of 1922.
S. 225, Madras District Municipal Act, V of 1920.
S. 282, U. P. Municipalities Act, 1916.

Dangerous or offensive trades.

Regulation
of offensive
and dangerous
trade.

121. (1) No place within a municipality shall be used for any of the following purposes:—

**melting tallow, dressing raw hides ;
boiling bones, offal or blood;**

as a soap-house, oil-boiling-house, dyeing-house or tannery;
as a brickfield, brick-kiln, pottery *charcoal kiln** or lime-kiln;

as any other manufactory. engine-house, store-house or place of business from which offensive or unwholesome smells, gases, noises, or smoke arise;

as a yard or depot for trade in slaked lime, hay, straw, thatching-grass, wood, charcoal or coal, or other dangerously inflammable materials;

as a store-house for any explosive; or for petroleum or any inflammable oil or spirit;

except under a license from the committee which shall be renewable annually :

Provided that no such license shall be necessary in the case of any such premises which were used for any such purposes at the time that the Punjab Municipal Act, 1891, came into force, and were registered under that Act, and in the case of brickfields, which were used at the time that this Act came into force; but the owner or occupier of the brickfields so excepted shall register the same in a book to be kept by the committee for the purpose.

(2) The license shall not be withheld unless the committee consider that the business which it is intended to establish or maintain would be the cause of annoyance, offence or danger to persons residing in, or frequenting, the immediate neighbourhood, or that the area should be for general reasons kept clear of the establishment of such business.

(3) The committee may charge fees according to a scale to be approved by the commissioner for such licenses, and may impose such conditions in respect thereof as it may think necessary. Among other conditions it may prescribe that any furnace used in connection with such trade shall, so far as practicable, consume its own smoke.

(4) The owner or occupier of any place registered under sub-section (1) may apply to have that place licensed under this section. When any such place has been licensed, the registration of that place shall thereby be cancelled, and shall not be renewed.

(5) Whoever, without registration or without a license, uses any place for any such purpose as is specified in this section or in contravention of the condition of any such license, shall be punishable with fine which may extend to fifty rupees, and with a further fine not exceeding ten rupees for every day during which the offence is continued.

* Added by S. 40 of the Amendment Act, III of 1933.

Notes.

S. 135 of the old Act with some alterations.

Alterations.—(1). The old section made registration compulsory and required licenses for new premises. The present section makes license compulsory except in cases where the premises were used before 1891 and were registered.

(2) Brick-fields, engine-houses, depots of charcoal have been included as places requiring a license.

(3) The breach of the conditions of license is also made punishable.

(4) The provision as regards the furnaces is rendered specific.

(5) Manufactory, etc., from which offensive noise or smoke arises, have also been included.

The Act has further been amended by Act II of 1923 and Act III of 1933 and places used as a charcoal kiln or for dressing raw hides, or as a yard or depot for trade in un-slaked lime have also been licensed while in the clause relating to any other manufactory, etc., the words "store-house" have been added and the emission of gases from such places has also been made a ground for licensing such places.

Analogous Law:—

Ss. 261 & 273 (2), Bengal District Municipal Act, 1884.	III of 1888.
S. 370, Bengal Municipal Act, XV of 1932.	S. 117, Burma Municipal Act, III of 1898.
Ss. 259 & 261, Behar and Orissa Municipal Act, 1922.	S. 386, Calcutta City Municipal Act, III of 1923.
Ss. 186 (4) & 171, Bombay Boroughs Municipal Act, 1925.	Ss. 133, 179 (f) & 189, Central Provinces Municipal Act, II of 1922.
Ss. 48 (b), 61 (b), 138 & 151, Bombay District Municipal Act, 1901.	Ss. 287, 290 & 288, Madras City Municipal Act, 1919.
Ss. 245, 248 List I-F (c) & 298 List I-G, U. P. Municipalities Act, 1916.	S. 249, Madras District Municipal Act, 1920.
Ss. 391 (3), 394 (d) & 461 (f), Bombay City Municipal Act,	S. 124, Rangoon City Municipal Act, 1922.
	<i>English Law:—</i>
	Ss. 112 and 113, Public Health Act, 1875.

Comments.—Manufactories or places of business, from which smoke or noise arises, were for the first time included amongst the places to be licensed. Such places, which were in use at the time the Act of 1911 came into force, were not given the option of registration.

Similarly under the Amending Acts of 1923 and 1933 new places included have not been given a chance of registration though they may have existed from a very long time.

Under the existing law all such places, as are used for purposes enumerated under the section are to be licensed. To get exemption from the license the owner or occupier of a place is to prove two things: (1) that the place was used for the purpose before 18th December 1891 (date on which Act of 1891 came into force), and (2) that the place was registered. If either of these conditions is not fulfilled, the place will require to be licensed. It is to be noted that it is the place that is to be registered, and not the owner and occupier who may be shifting from place to place, though carrying on the same trade.

Licensing power.—Municipal corporations exercise their powers to regulate occupations and businesses, etc., by the issue of licenses by means of which various things, that require supervision within their local limits in the interests of public health, safety, and convenience, are kept under their control. A license is in effect a permission granted to a particular person to do a particular thing at a particular place during a particular period. A license is not in the nature of a contract. The object of calling upon the person to take out a license is to keep the trade under control of the committee. The committee can regulate the mode of working, but it cannot prohibit the carrying on of the trade. Besides S. 121 requiring licenses for trades specified, there are other provisions which similarly empower committees to regulate certain businesses by issue of license. S. 122 controls the cinemas and dramatic and other performances. Slaughter-houses are controlled by S. 167. By framing bye-laws under Ss. 188, 197 and 198 committees obtain power of licensing certain other class of persons and businesses, while powers to regulate other matters without license are also given in these sections.

Where discretion has been conferred without restraint and qualifications, it is merely due to difficulty of defining in advance upon what conditions the license shall be given and the dispensing power exercised.

Licensing power is a power of regulation and not prohibition.—Under a corresponding provision of Madras City Municipal Act it has been *held* that the commissioner* has no doubt powers under S. 287† over persons who conduct a number of different trades, occupations and operations. The powers so entrusted to the commissioner are, however, not intended for the prohibition of any of these trades, occupations or operations, but for their regulations in the interests

* Corresponds to executive officers in the Punjab.

† Cf. S. 121 of the Punjab Act.

of the people of Madras. If he refuses to grant a license under S. 287, he has to state his reason for doing so; he cannot act arbitrarily. And any person who applies for a license which is refused by the commissioner, or to which the commissioner attaches conditions, can appeal to the standing committee of the corporation, and if the standing committee use their power unreasonably or perversely, the person concerned has his remedy in the courts. 1931 Mad. 152.

Presumption that the powers given will not be abused.—

Some people refuse to take licenses on the ground that the committee or its officers cannot be relied upon in acting honestly and that licenses may be refused on personal motives. These fears are groundless and cannot be given effect to without special proof in individual cases. "Laws are not made upon the theory of the total depravity of those who are elected to administer them and the presumption is that municipal officers and members will not use these small powers villainously and for purposes of oppression and mischief." Dillon, p. 938 n.

When Government appoints a high and responsible officer or a responsible body of persons to carry out the purposes of an Act, it takes it for granted that he or the body will endeavour to the best of his or their ability to do so and will not act perversely. It is not expected that the officer or the body will deliberately, perversely or corruptly set himself or themselves to frustrate rather than promote the interests for the protection of which the Act is passed. A danger of this kind is so remote and chimerical that it is quite outside the range of practical discussion. 5 I. C. 213 at p. 316.

All of us are subject to various authorities. We cannot escape submission to those authorities by saying that we fear that the powers of the authorities will be abused. If that were allowed all Government and administrations would be at end. 54 Mad. 364; 1931 Mad. 152.

Necessity of license for Electric Supply Companies.—By virtue of the special acts under which Electric Supply Companies have been granted license by Government, they are exempt from the portion of S. 121 empowering the committee to issue license in certain cases, the said section being inconsistent with the powers granted by the Government under special Act. Where there is inconsistency between a general and a special Act the provisions of the latter must over-ride the former. 52 M. L. J. 474; 1927 Mad. 522. *See contra* 1931 Mad. 152.

Necessity of licence for workshops of Tramways.—The words "other works" used in Cl. (1), S. 7 (2), of

Madras Tramways Act cannot be construed as including workshops. Workshops are not provided for in the Tramways Act. They are provided for in the City Municipal Act. There is nothing in the least inconsistent between the provisions of the Tramways Act and the provisions of the City Municipal Act whereby the commissioner is empowered to require anyone to take out a license before he casts metal, or hammers or breaks iron or beats metal. The Tramways Company are not entitled to cast metal or to break or hammer iron or beat metal in their workshops without obtaining license from the commissioner of the corporation. 1931 Mad. 152.

Interpretation of Statutes—General and Special Acts—how to be construed.—If the legislature makes a special Act dealing with a particular case and later makes a general Act, which by its terms would include the subject of the special Act and is in conflict with the special Act, nevertheless unless it is clear that in making the general Act the legislature has had the special Act in its mind and has intended to abrogate it, the provisions of the general Act do not override the special Act. If the special Act is made after the general Act, the position is even simpler. Having made the general Act, if the legislature afterwards makes a special Act in conflict with it, it is assumed that the legislature had in mind its own general Act when it made the special Act, which is in conflict with the general Act, as an exception to the general Act. A special statute containing no provisions inconsistent with a general statute is, however, controlled by the latter even if this is not expressly incorporated. 1931 Mad. 152.

A licensee under Electricity Act is bound by the provisions of the Municipal Acts regulating certain trades etc. A licensee under an Act of a general character like the Electricity Act, which extends to the whole of British India, is not in all respects in the same position as a person in whose favour a special Act has been made.

Because the municipal committee consents or raises no objection to the issue of a license for the supply of electricity within the municipal boundaries, it does not follow that it gives up its control under S. 288* in respect of the generating station.

The power to make general rules for the whole of British India or any considerable part of it cannot make local control and consideration of immediate local conditions unnecessary. Because in their license the electric company are empowered to have a generating station somewhere within the limits

* Corresponds to S. 121 of the Punjab Act.

of Madras, they are not free from the ordinary control of the local authority in respect of the steam boiler which they use to provide motive power for generation.

The Electricity Act is not a complete code. There is nothing inconsistent in the Electricity Act or the license issued under it to the electric company and the City Municipal Act in respect of the use of steam boiler and the electric company are not entitled to use the steam boiler in their generating station without obtaining the permission of the commissioner of the corporation. 1931 Mad. 152 at p. 161.

A licensee under the Electricity Act is subject to the control of Boilers Act just as every one else is.

But it is impossible to fit in with the theory that the Electricity Act and the license issued under it have the effect that those who get the license are exempt from the control of any authority under any other Act. Nor can it be supposed that, if the electricity company now wished to extend their generating station by raising another building, they could ignore the building regulations to which everyone else in Madras is subject, that they could raise the building to any height they liked, could make it overhang a public highway, could ignore all sanitary regulations, or so arrange that the drainage from the building went, not into the municipal system of drains, but into a public road.

In this connection, we think it is also relevant to consider that if we allow the contention raised by the electric company it would follow that several other provisions of the City Municipal Act would not be applicable to them at all. There are provisions relating to buildings contained in Ss. 232, 235, 243 and 245 of the Act, and with reference to some of them similar questions have arisen in England and courts have there held that such companies are bound by similar provisions relating to buildings. In the absence of more definite provisions in the Electricity Act, we do not see any reason for adopting a construction of the Act which will make many of the salutary provisions designed for public safety and benefit practically a dead letter with reference to such companies if the company's contention be upheld. 1931 Mad. 152; 54 Mad 364.

Two local authorities invested with similar powers.—Where two local authorities are invested with licensing powers the powers of one cannot be said to be cancelled by the powers given to the other. For one statute to cancel another they must be mutually destructive. The question is whether the legislation intended the two rights to exist together. 1927 Mad. 602; 101 I. C. 667; 50 Mad. 845.

Dangerous and offensive trades.—The words offensive or dangerous trades are only words of general description to facilitate reference and cannot limit or control the plain words of the section which are that no place shall be used for any or more of the purposes specified. 30 Mad. 220.

Manufactory used for more than one purpose.—Where the accused obtained the municipal committee's permission to establish a handloom factory worked by an oil engine but by means of this oil engine he also established a flour mill without any permission: *Held*, that the accused was guilty of a technical offence under S. 390 of the Bombay Municipal Act. Although the accused had power to establish the handloom factory, he had no leave to establish the flour mill factory which was not the less another and a separate factory because it happened to be worked by the same power as was proposed to be employed in the permitted factory. 12 Bom. L. R. 122; 5 I. C. 859.

Profession license.—A lime trader who has obtained a license under the professional tax for carrying on profession is not exempted from taking out a separate license to store lime as required by S. 121. *Cf.* 34 Cal. 913.

Place used for more purposes than one.—When a place is used for more purposes than one mentioned in this section, the municipality can charge license fee equal to the total of fees which would be leviable if a separate license were taken for the use of a separate place for each of the said purposes. 8 Mad. L. T. 373; 8 I. C. 574.

Under a corresponding section of the Madras District Municipalities Act, IV of 1884, it was held that a separate license is required for each of the modes of user of the premises specified in clauses (a) to (g) of S. 138. (=S. 121 of Punjab Municipal Act).

The mere fact that a person has taken out a license for tannery would not entitle him to use a lime-kiln without taking a separate license although the latter may be a subordinate part of business. 1 Weir 737 (1897).

License for trade, for animals and for premises, by the same person. *See* 47 Cal. 809.

A carrier is required to take out a trade license and also license for premises where animals are kept. The trade license cannot exempt the carrier to take a license for the premises used for a particular purpose. 58 I. C. 924; 47 Cal. 809.

Place.—Each separate kiln is a separate "place" and therefore requires a separate license. 1 Weir 737 (1894).

Kiln.—The word “kiln” in the section refers to a structure which is of a permanent nature and does not include a *panja* or clamp for firing bricks.

For distinction between kiln and *panja* or clamp *see* 72 I. C. 356; 49 Cal. 1014; 1928 Mad. 1195; 111 I. C. 736.

Manufactory from which unwholesome smells arise, etc.—

This clause refers to a manufactory which is such that offensive or unwholesome smells arise from it as the natural result of working the factory in the ordinary way. The mere fact that an objectionable smell arises inside the factory by negligent user is not sufficient to bring the factory within this clause; there must be an offensive or unwholesome smell issuing from the premises so as to create a possibility of its causing a nuisance to the neighbourhood.

A flour mill worked by a camel is not such a manufactory as is contemplated by S. 121. 9 I. C. 886.

In the above Bombay case under a section somewhat corresponding to S. 123 of the Punjab Act, it was also *held* that the section authorizes a municipality to issue a notice if it is satisfied that the smell which issues from the factory, in the ordinary course of ordinarily careful user, is so offensive as to cause annoyance to the neighbourhood.

If the trade or manufactory does not fall within the scope of S. 121 but is carried in improper manner causing nuisance to the neighbourhood, then committee cannot take action under S. 123.

This section covers not only places which are *per se* offensive and noxious but also places of business from which offensive or unwholesome smells may arise. So a rice mill where paddy is boiled and kept soaked in water and thus offensive smells arise from water thus used it was *held* that the place should be licensed. 65 I. C. 518.

It was further contended that the clause “manufactory or place of business from which offensive or unwholesome smells may arise” should be construed *ejusdem generis* with the clauses proceeding it, *viz.*, “melting tallow, boiling offal or blood” and so on. But the previous clauses cover not only such cases but also places used as kiln for making bricks, pottery, tiles or lime, or used as a shop for the sale of meat. Therefore it is evident that the genus comprise trades, business or manufactory which are not offensive *per se*. 1922 Cal. 99, 65 I. C. 518.

Pounding of tobacco leaves.—Where it has been found that the manufacture of *hooka* tobacco is not one giving rise to

offensive or unwholesome smells, a person cannot be prosecuted under 121 of Punjab Municipal Act for not taking out a license for carrying on the pounding of tobacco leaves for the manufacture of *hooka* tobacco. *Cf.* 1928 Pat. 193 (1), 112 I. C. 345.

Place of business.—There are numerous places in municipal areas from which smoke etc. arise. Such places cannot be licensed unless they are places of business. Nuisances arising from places which are not places of business should be dealt with under other provisions of the Act.

Offensive.—Offensive smells, etc., need not be injurious to health. Smells affecting sense of smell will be offensive. *See* 34 Cal 73. It is sufficient to prove that the affluvia are nuisance in that they cause annoyance and discomfort without proving injury to health. *Malton B. of H. v. Malton Farmers Manure Co.*, (1879) 4 Ex. D. 302.

As a yard, etc.—License is only required when these articles are stored in any place for the purposes of trade. The storage of these articles for a purpose other than those of trade can be regulated under Ss. 180 and 188 (q).

The license for places used as a yard or a depot for hay, etc., and for places used as a store house for explosives, etc., must be distinguished from power of regulation granted under bye-laws to be framed under S. 188 (q). The committees are wrong in not requiring licenses when yard or depots for trade in hay, etc., do not store more than a fixed quantity of these articles. Whatever the quantity of articles, etc., in the depot if the articles are stored for the purposes of trade the depot or yard must be licensed.

A license under S. 121 to store wood will not cover permission that is required under S. 181 to erect a shed over the wood. 54 I. C. 49.

Wood and other dangerously inflammable materials.—The word "wood" is used in its ordinary and natural meaning and includes timber. A timberyard, therefore, is a yard or depot for trade in wood and requires a license. It was contended in this case that timber is not an article of a dangerously inflammable nature. It was *held* that these words do not limit the application of the preceding words; and the section would be applicable even if it could be shown that the wood stored was not of a dangerously inflammable nature. Some kinds of timber may not be dangerously inflammable and other kinds may properly come within the description. The legislature intended to include every kind of wood because wood is itself of a very inflammable nature. *Cf.* 63 I. C. 327; 1921 Pat. 178.

Inflammable materials.—Bamboo mats used in the erection of a *pandal* are inflammable materials within the

meaning of this section. Cf., 1 Weir 733 (1895). Bamboos were held to be inflammable. *Nur Ilahi and others v. M. C., Lahore* in C. A. No. 1171 of 1920.

Store house. - Under the corresponding S. 394 of the City of Bombay Act (III of 1888) it has been ruled that the premises in order to attract the operation of the section should be used for the purpose of storing. The intention of those using the premises must be to store, i. e., the storing must be the object aimed at, the final cause for which the premises are used. The actual use is by itself insufficient in the absence of proof as to the object aimed at. The purpose to store must be the dominant motive. Where articles are kept on the premises not because for the purpose of storing them but merely because they have not been consumed as rapidly as anticipated or for other similar reasons it cannot be reasonably said that the premises are used on purpose for storing.

The relative quantity of the articles kept in proportion to the exigencies of consumption must in each case be important evidence as to the purpose or intention. 29 Bom. 193.

Storage.—When goods are kept in a shed or godown with a view to their subsequent consignment it is the best illustration of storage proper. The shortness of the period of storage does not affect the question. In a business one package may only be stored a couple of nights but it is succeeded by other packages and the storing is practically continuous. 1927 Mad. 624; 50 Mad. 752.

In this case a forwarding agent who collected packages of fish for consignment elsewhere and kept the packages in a rented shed without taking out a license when license was required for storage of fish, he was held guilty.

A place where varying quantity of oil is kept for daily sale is a place used for storing oil and therefore a license must be taken. 18 I. C. 663.

Where the accused used what is described as a shop for selling wood, and kept wood there in order to sell it:

Held: that it is a case which properly comes within the meaning of clause (n), as there would be continual storing of wood for the purpose of selling it, and not a casual storage of a few days' supply for domestic use. 50 Bom. 760, 1926 Bom. 546; 97 I. C. 811.

Clause (2).—Under this clause the rule is that the license shall be granted. It can only be withheld if the municipality considers that the business would be annoying and

dangerous, or offensive to the neighbourhood. The courts cannot go into the reasons in case the committee decides otherwise. The magistrate may convict and punish any person contravening provisions of the section by using any place for any of the purposes mentioned without a license from the municipality.

The questions whether the municipality refused the accused a license and whether the refusal was legally justified are irrelevant to the determination of a case under this section. Cf. Rat. Un. Cr. Cas. (1894), p 789.

For places which fall within the purview of S. 121, license has to be obtained whether the uses to which the place is put makes it a nuisance or not. Whether it is a nuisance or not is immaterial. License has to be obtained in either case and may be withheld in the former case. Cf. 1927 Mad. 156; 50 Mad. 733

The provisions of sub-S. (2) 259* of the Bihar and Orissa Municipal Act themselves supply the only reason for which refusals of certain licenses can be made. But the omission of the commissioners to give the only reason which they could give for such refusal cannot be regarded as making their refusal illegal.

The municipality has the right to declare that within the whole area of the municipality, certain offensive or dangerous trades cannot be carried on without a license. 86 I. C. 964; 1925 Pat. 540; 4 Pat. 311.

Jurisdiction of Civil Courts.—Municipal as well as other public bodies are included within the restraining and regulating jurisdiction of the civil courts of the country which are competent to inquire into and control the action of public bodies where they have acted in excess or contravention of the powers conferred upon them. As already observed, in granting or refusing licenses, municipal corporations have to exercise a judicial discretion. "Discretion is a science or understanding to discern between falsity and truth, between right and wrong, between shadow and substance, between equity and colorable glosses and pretences, not to do according to the will and private affections." As observed by Lord Halsbury, L. C., in *Sharp v. Wakefield*, (1891) A. C. 179 "discretion means, when it is said that something is to be done within the discretion of the authorities, that the something is to be done within the rules of reason and justice, and not according to private opinion; according to law and not humour. It is to be not arbitrary, vague and fanciful, but

* S. 121 (2) of Punjab Municipal Act.

legal and regular." If the discretion is properly exercised, the court cannot interfere.

Discretion in the exercise of powers.—The discretion which the local authorities are bound to exercise is not an arbitrary uncontrolled discretion but a discretion to be exercised reasonably, fairly and justly. If the exercise of discretion is merely a colorable performance, then it is tantamount to a refusal by the local authority to exercise the discretion; and the civil court will interfere.

The question whether a certain business is offensive within the meaning of S. 121 of the Punjab Municipal Act, is to be decided by the municipal committee and unless the committee's action is wanton, unreasonable or tainted with *mala-fides* the civil court have no power to interfere with its decision. 49 I. C. 881; 34 P. W. R. 1919.

It is not competent to a municipality to fetter the discretion of its members or successors by self-imposed rules in lieu of exercising such discretion in each case as it arises. (1844) 60 Q. B. 163; 27 Bom. 307.

The question whether a certain business is offensive is to be decided by the committee and unless the committee's action is *mala-fide* the civil court have no power to interfere.

A municipal committee would not be justified in refusing to grant a license properly applied for under the provisions of the Act not on any grounds of public safety, health and public convenience but merely in order to secure advantage to itself in a dispute about a question of title with another person. See 53 I. C. 153; 52 I. C. 785.

A civil court has no jurisdiction to interfere with a municipal committee's order under S. 121 in the absence of a finding that the action of the committee is wanton or without any jurisdiction or is tainted by *mala-fides*. 46 I. C. 571; P. R. 6 of 1919.

Refusal and damages.—The committee has absolute discretion to refuse or grant a license and a suit for damages, for refusal to grant such a license does not lie. 28 I. C. 709.

Refusal of license—Failure to prefer appeal.—Where the accused does not prefer an appeal given by law against the order of refusal of license, he cannot be heard in criminal prosecution to say that the order of refusal was arbitrary. In this case license was not refused on grounds of health or convenience. 58 I. C. 153.

Exercise of power to grant or refuse.—The power to grant a license includes the power to refuse it.

The power to refuse should be used with discretion. The license cannot be refused unless clear grounds exist for so doing. 28 Mad. 520.

Power to grant or refuse license.—The municipal authorities have a discretion whether to grant a license or not; and their discretion is not capable of being controlled by a court of law: 8 Mad. H. C. R. 151. The power to grant a license would include also the power to refuse the license. A power to interfere with the ordinary rights of citizens will not be inferred in the absence of express grant, unless it be necessarily implied as incidental to other powers expressly granted or is indispensable to suppress the mischief contemplated and advance the remedy given. Doubts as to the existence of such powers must be resolved against the corporation and in favour of the public. The court cannot substitute its judgment for that of the municipal authorities; unless it is clear beyond doubt that the municipal authorities are using their authority with some indirect motive and for a collateral purpose, not for the purpose for which the legislature has armed them with the power, the court cannot interfere with their discretion: 28 Bom. 253. In cases where persons are prosecuted for not taking out a license, the magistrate has merely to see whether a license has been obtained or not. The question whether the municipal authorities refused the accused a license and whether the refusal was legally justified are irrelevant for the determination of the case. (Cr. Rg. 57 of 1894.)

The fact that license was wrongfully refused is no answer to a charge of storing oil without license: 45 Bom. 1076. Where different trades are carried on in the same premises, licenses must be taken out for the use of the premises for the different trades. The license is for the use of a place for the given purpose; and the municipal authority can issue as many licenses or a single license and levy as many fees as there are trades, even if only one place is used. 8 I. C. 574.

Doubting 28 Mad. 520 it was held that a municipality has absolute discretion to refuse to grant a license. 28 I. C. 709.

Where an officer is authorized to exercise his discretion, he cannot fetter that discretion by an absolute rule. Under Bombay Act VI of 1863 the commissioner of police is authorized to grant licenses for public conveyances and he is further authorized to refuse a license for any conveyance which he may consider to be insufficiently found or otherwise unfit for the conveyance of the public. Under this section the commissioner is bound to exercise his discretion in each

case. This discretion is not an absolute one but one which is to be exercised after he has made himself acquainted with the conveyance to be licensed and has considered whether it, as an individual carriage, is fit for the conveyance of the public.

His refusal of license therefore on the ground that a particular conveyance does not conform to a certain pattern approved by him is illegal. 27 Bom. 307.

Where a general resolution was passed that no more licenses be granted for storing hides in the municipal area from a particular date, it was doubted whether the municipality had powers to pass any such resolution and that it could only withhold licenses in individual cases, each case being considered on its own merits. 18 I. C. 651. See also 26 Bom. 396.

Shall be used.—The old Act required licenses for places newly used for the purposes specified. The present section is general and it does not matter how long the place may have been used or whether it is newly used.

Clause (5) – uses any premises. – The words mean using and employing the premises as a place for carrying on any of the offensive trades mentioned in the section.

No person is liable to any penalty under the clause except a person who without license uses a place or building for the purposes mentioned. In all instances mentioned the master and owner of the trade is treated as the person using the place. Servants employed in any operations necessary for the purpose of carrying on the offensive trade are not liable to any penalty. Cf. 16 W. R. 4 Cr.

A partner cannot carry on a business requiring a license unless he holds a license; his partner's license will not authorize him to carry on the business.

If the person carrying on a particular business as a principal must be licensed under the law, such a business cannot be carried on by a partner who does not hold such license. The reason is obvious, that unless he were licensed, there could be no control over him. To hold that a person who has not got a license could still be a partner with one who has a license and as such partner carrying on the business with or without the other would enable the unlicensed partner to evade the liabilities intended by the law to be cast on persons carrying on the business. 24 Mad. 401.

License will not justify creation of nuisance.—The license will not protect the holder to commit a public nuisance. Some

of the trades may be carried on in a manner as to create a public nuisance punishable under the Penal Code.

It has therefore been *held* that previous sanction to the establishment of a trade does not entitle the proprietors to continue the business after it has become a public nuisance to the neighbourhood. No prescriptive right can be acquired to maintain and no length of enjoyment can legalize a public nuisance. 16 W. R. 6 Cr.

It is an actionable nuisance to erect an oil mill close to a dwelling house from which foul smelling water is always discharged and noise is produced which can be heard from distance of two furlongs. The owner of the adjoining house is entitled to ask for prohibition of the working of the mill altogether where the nuisance cannot be abated. 45 I. C. 428.

Grant of license does not absolve the licensee from duty not to cause nuisance. 48 Bom. 241; 1924 Bom. 241.

Oil Engine causing vibration, injuries or damages.—A man is liable if he causes vibrations by an engine or otherwise and thereby injures the property of another. Though the nuisance was in existence previously and the man comes to the nuisance, still he is entitled both to the remedy by way of damages and the remedy by injunction. Whether an injunction should be granted or only damages depends upon circumstances of each case. Where the vibrations caused to the building are such that if the nuisance continues there is a danger of the whole building collapsing it is clearly a case for injunction and not for damages.

The land in cities has a special situation value, and there is no reason for allowing people to have advantage of the proximity of their fellows and to expect the freedom from interference of the country. There is also no logical distinction between a nuisance which diminishes personal convenience and one which affects property. Both ordinarily affect the value of the property for the proximity of an oil engine may not only cause material damage, but may depreciate the letting value of the house. But where the vibrations are caused to the building which is not a abnormally ramshackle, the owner is entitled to protection. 1930 Sindh 310, 123 I. C. 289.

Flour mill worked by an oil engine causing nuisance.—Where a flour mill worked by an oil engine was established close to a house occupied by several tenants including a lady doctor and a clergyman and a suit was brought by the owner to restrain the establishment of the flour

mills on the allegations that the working of the mill caused great trouble to the occupants and interfered with their business and ordinary comfort, both courts came to the conclusion after inspection of the spot that working of the flour mill in that locality interfered with the comfort of the inhabitants of the house and disturbed them in carrying on the usual business, but the suit was dismissed as no substantial interference with the physical comfort and convenience was proved.

What may, however, cause inconvenience to persons with dainty or elegant modes or habits of living may not cause similar inconvenience to persons accustomed to live in the busiest portion of a town. A discomfort to be actionable should be substantial. It should be substantial not merely with reference to the plaintiff; it must be of such a degree that it would be substantial to any person, occupying the premises of the plaintiff, irrespective of his position in life, age, or state of health. As pointed out by Lord Westbury in *St. Helen's Smelting Co. v. Tipping* (1865) 11 H. L. Cas. 641, there is a distinction between an action for a nuisance in respect of an act producing a material injury to property, and one brought in respect of an act producing personal discomfort. As to the latter a person must, in the interest of the public generally, submit to the discomfort of the circumstances of the place, and the trades carried on around him. The nature of the interference has to be examined in each case in the light of the circumstances of the place, where the thing complained of actually occurs, and the degree of inconvenience caused must determine the nature of the relief to which the person complaining may be entitled. "If a man lives in a town," said Lord Westbury, "it is necessary that he should subject himself to the consequences of those operations of trade which may be carried on in his immediate locality, which are actually necessary for trade and commerce, and also for the enjoyment of property and for the benefit of the inhabitants of the town and of the public at large. If a man lives in a street where there are numerous shops and a shop is opened next door to him which is carried on in a fair and reasonable way, he has no ground for complaint, because to himself individually there may arise much discomfort from the trade carried on in that shop." But where an occupation is carried on by one person in the neighbourhood of another, and the result of that trade or occupation or business is a material or substantial interference with the ordinary physical comfort and convenience of another person, residing in that locality, then

very different considerations unquestionably arise. 1924 All. 392; 46 All. 297, 78. I. C. 506.

Difference between license-fee and taxation.—A corporation empowered to levy license-fees wanted to raise them from Rs. 25 to Rs. 200, solely for the purpose of raising the revenue, the rise being merely a counter-demonstration to the order of Government refusing to allow the corporation to take the *abkari* revenue of the city:

Held, that the power given to council to levy license-fees cannot be used as a power of taxation.

There is a great difference between taxes and license-fee. That a tax is not the same as a license-fee, is clear from the fact that no permission has to be obtained before a tax becomes payable and the tax is not paid for such permission, whereas the license-fee is payable in respect of a permission which is granted by the corporation. So the taxes cannot be treated as being in the same category as license-fees under the Act.

The fee income must be more or less proportionate to the trouble and expense incurred by the corporation in issuing licenses and in controlling trades and other matters for which licenses are issued. But roughly speaking if the fees bring in much more than the cost of necessary operations, or if the fees are so fixed that the whole cost incurred by the corporation in connection with all the licenses or a grossly disproportionate part of it was imposed on one particular trade or a few particular trades, then the courts can interfere on grounds of unreasonableness. Hence where the license-fees for storing spirits was raised from Rs. 25 to Rs. 200, the courts interfered. 1930 Mad. 55; 52 Mad. 764. See 1931 Mad. 497 also.

Court's interference with license-fee paid.—When the committee has power to charge license-fee at such rate as shall from time to time be fixed by it the court has no right to interfere until it is established that the fee as fixed is so unreasonable as to be illegal, and the burden of proving that the fee fixed by the corporation is so excessive as to be illegal is on the owner of the market alleging it to be so. The license-fee may reasonably cover the cost of all special services necessitated by the duties and liabilities imposed on the corporation in respect of the supervision and regulation of private markets, and is not limited to the cost of the paper on which licenses and receipts for the fees are printed, together with the cost of printing and writing thereon and the cost of such inspection as is directly connected with the license themselves. 1930 Rang. 282.

Excessive license-fee.—Action of municipalities held to be *ultra vires*. 1931 Mad 497.

Whether a license-fee is excessive or not will depend on the circumstances of each particular case.

The license-fee was not raised with reference to the expense of collection or regulation and the result of the enhancement was to impose on the plaintiffs who stored groundnut in the premises, a very unfair burden as compared with other tax-payers of the city:

Held, that the levy of such fee by the municipal council was unreasonable and *ultra vires*, not being in substance and effect a compliance with the provisions of the Act. 1931 Mad. 497, 130 I. C. 750.

Monopoly—license.—Agreements having for their object the creation of monopolies are void as opposed to public policy under the English Common Law and under S. 23 of the Indian Contract Act.

The power conferred by S. 191, clause 2 of Madras District Municipalities Act IV of 1884 on the chairman of a municipality to license places for selling meat, etc., only empowers him to consider the propriety of granting or withholding licenses in each case and not to enter into agreements which must preclude him from considering any such application except from a particular person or persons.

The plaintiff entered into an agreement with the municipality undertaking to grant exclusive right of selling meat and fish within municipal limits. Plaintiff brought a suit for damages for breach of the contract. The agreement was held to be void and suit for damages was dismissed—claim for only refund of the license fee was allowed.

Where a municipal body receives license fees under a void agreement, it must, when the agreement is set aside, refund the amount so received; and a suit to recover such amount will not be barred by S. 262* (2) of the Madras Act, IV of 1884. 28 Mad. 520.

Refusal to take a license—Recovery of fee under S. 81—Proper procedure.—When the committee thinks that a person should take out a license and that person refuses to do so and carries on his trade without a license the proper course is to prosecute him under S. 121 and not to apply under S. 81 for the recovery of the fee for the license. Cf. 1926 Mad. 1068, 97 I. C. 947.

* S. 49 of Punjab Municipal Act and S. 2 of Limitation Act.

Section 121 (5)—Where a person has been called to take out a license and he makes representation urging that the license was not necessary and he was informed that his representation was under consideration, the conviction of such a person is bad. 1926 Cal. 614 ; 27 Cr. L. J. 549.

Continuing offence.—The accused who set up a flour mill intending to work it by electricity without the written permission of the corporation was convicted and sentenced to pay a fine on 30th March 1927. After the said conviction he worked the mill from 1st April onward for which he was prosecuted for having committed a continuing offence and was sentenced to pay a daily fine of Rs. 10: *Held* that once the mill has begun to work with electricity the thing passes beyond the range of intention and it cannot be said to be a continuance of the same offence but must be regarded as a new offence altogether and conviction is bad in law and must be set aside. 1928 Cal. 387; 32 C. W. N. 591.

Miscellaneous - Injunction.—A competent criminal court is just as much entitled to decide a question of fact as a civil court. The municipal council should not therefore be restrained by an injunction from launching a prosecution against the owners of rice mills if they use their premises without license or against the conditions of the license. 1929 Mad. 345; 119 I. C. 465.

Renewal of license—Question of limitation—Municipality or statutory bodies.—They are created by a statute for the benefit of the public and it is not proper that any provision of law relating to them should be so construed as to work hardship or injustice. The provisions of municipal law prescribing periods of limitation under it should not be understood as if they were articles of Limitation Act. Where therefore the law required the applications for renewal of licenses to be made not less than thirty days before the end of the year and such applications were made only a few days before the end of the year there is no bar to the issue of the license by the fact that the applications were not made in time. 1928 Mad. 1157; 55 M. L. J. 495; 112 I. C. 210.

Revocation of license for reasons not connected with the business.—Where the accused has properly obtained a license the improper or illegal cancellation of it does not deprive him of the license, the terms of which he has not in any way violated. The criminal court in trying the accused in such cases can enquire into the validity of the order of cancellation and if the order is *ultra vires* the license can be treated as not cancelled. The municipality can cancel the license only for contravention of any of its terms and

it is not open to it to cancel the license for any reason that it thinks proper. 1928 Mad. 847; 51 Mad. 876.

Magistrate's jurisdiction to take action under S. 133, Cr. P. C., in cases of premises licensed by Committee.—A magistrate has jurisdiction to pass an order under S. 133, Cr. P. C. to regulate the manner in which a person working a lime-kiln has been conducting his business in a manner injurious to the health or physical comfort of the community. It is generally inexpedient that a magistrate should take action in such cases, for these matters are left by the legislature to the control of the municipal boards who have a health officer to instruct them on matters of hygiene. If the magistrate directs the accused to remove the kiln in spite of the license given by the municipal board, the High Court would be loath to uphold such an order *in toto* as it would afford a disastrous precedent by allowing magistrates to interfere in matters which have been made over by the legislature to the municipal boards and the committees of public health appointed under them. But where the Sessions Judge recommends modification of the Magistrate's order in accordance with the suggestion of the health officer of the municipality, the aforesaid objection would not apply if the High Court were able to hold that such a modification was justified in the interest of the public health. If, on the contrary, it appears that the lime-kiln is not a danger to the community, and if it causes discomfort to anyone it is only to the complainant and his immediate neighbours who have deliberately chosen to reside in smoke and smell from the kilns, it would not uphold the order even in the modified form as recommended by the Sessions Judge. 54 All. 112; 1932 All. 159. See also 1931 All. 433; 57 I. C. 829.

Infliction of daily fine.—See Notes to S. 219.

Consent of
committee to
use of new
factories,

121-A. (1) Within any municipality to which this section shall have been extended by the local Government no person shall use as a factory any place which has not previously been so used without having obtained the consent of the committee.

(2) The consent of the committee may be given without condition or subject to the condition that the owner or user of the said factory shall provide adequate housing accommodation for labourers employed in the factory or for any proportion or class of such labourers :

Provided that the consent of the committee shall not be withheld for any reason except the refusal of such owner or user to comply with such condition ;

Provided further that if the committee neglect or omit to give their consent within a period of two months from the date of application, such consent shall be deemed to have been given without condition.

Notes.

This is a new provision introduced by Act II of 1923.

Factory has the same meaning as in the Indian Factories Act. No factory can now be established for the first time without the consent of the committee.

No punishment is provided for a breach of the provision; this seems to be an omission. Where, however, the factory has been established with the requisite consent, then failure to comply with the conditions of the consent will be punishable under S. 219.

Analogous Law: —

S. 39, Bombay City Municipal
Act, III of 1883.

S. 123, Rangoon City Municipal
Act, 1922.

S. 250, Madras District Municipi-
pal Act, V of 1920.

This section will only apply when a person intends for the first time to establish or construct any factory. It will not apply to a case where the machinery has not been interfered with and only the shed in which machinery was kept has been altered by changing the original room into a new room of brick and mortar. Cf. 72 I. C. 613; 1923 Mad. 375 (1).

When factory or engine is removed from one place and set up at another place permission of the committee is required for this under the above section. Cf. 1924 Mad. 389, 81 I. C. 72.

Distinction between Ss. 121 & 121-A. — The object and scope of these two sections is entirely different. The former contemplates the annual payment for the use of the machinery while the latter a payment once for all for installing it and therefore permission under S. 121-A does not absolve the owner of a rice mill and engine from taking out license under S. 121. Cf. 1926 Mad. 1131; 50 Mad. 467.

The places referred to in S. 121-A are those of a more important character, and before any person can construct or establish any such factory, he is bound to get the permission of the council to do so. That permission is given solely for the construction, establishment or installation. S. 121-A does not deal with user of such places but only with their inception. When the owner wishes to use them, and they are such as come within 121, then S. 121 becomes applicable and the owner must take out an annual license from the chairman of the council. Cf. 1927 Mad. 961, 105 I. C. 686.

A provision like the second proviso to this section should also find a place in S. 121 to ensure early disposal of license applications.

Note.—The Punjab Act, however, does not prohibit the establishment or construction of factories but prohibits their use. This seems inequitable to prohibit the use after a factory is constructed, previous consent to establishment or construction would be more appropriate.

prohibition
cinemato-
graphs and
amateur
performances
except in
licensed pre-
sents.

122. (1) No exhibition of pictures or other optical effects by means of a cinematograph or other similar apparatus for the purpose of which inflammable films are used, and no public, dramatic or circus performance or pantomime, shall be given in any municipality elsewhere than in premises for which a license has been granted by the committee under this section.

(2) If the owner of a cinematograph or other apparatus uses the apparatus or allows it to be used, or if any person takes part in any public, dramatic or circus performance or pantomime, or if the occupier of any premises allows those premises to be used, in contravention of the provisions of this section, or of any condition of a license granted under this section, he shall be liable to a fine not exceeding two hundred rupees, and in the case of a continuing offence, to a further penalty of fifty rupees for each day during which the offence continues, and the license if any shall be liable to be revoked by the committee.

Notes.

This section is new. The words "or circus" were added by Act II of 1923.

Analogous Law.—*Cf.* S. 149 of C. P. Act, II of 1922; S. 391, Calcutta City Municipal Act, III of 1933; S. 124 Cantonment Act, II of 1923.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

The orders of executive officer refusing license may be made by bye-law subject to revision by the committee.

power to
inhibit such
shows.

123. (1) Whenever it appears that any place registered or licensed under the preceding sections is a nuisance to the neighbourhood or likely to be dangerous to life, health or property, the committee may, and if so required by the local Government shall, by notice require the occupier thereof to discontinue the use of such place, or to effect such alterations, additions or improvements as will, in the opinion of the committee, render it no longer a nuisance or dangerous,

(2) Whoever after any notice has been given under this section, uses such place or permits to be used in such a manner as to be a nuisance to the neighbourhood or dangerous or does not effect such alterations, additions or improvements, shall be punishable with fine which may extend to two hundred rupees, and with a further fine not exceeding fifty rupees for every day during which the offence is continued.

Notes.

S. 136 of the old Act.

Analogous Law:—

Ss. 262 & 277, Bengal District Municipal Act, 1884.
S. 371, Bengal Municipal Act, XV of 1932.
S. 260, Behar and Orissa Municipal Act, 1922.
S. 186 (2), Bombay Municipal Boroughs Act, 1925.
S. 151, Bombay District Municipal Act, 111 of 1901.

S. 118, Burma Municipal Act, 111 of 1898.
Ss. 134 & 190, Central Provinces Municipal Act, 11 of 1922.
S. 251, Madras District Municipal Act, V of 1920.
S. 245, United Provinces Municipalities Act, 1916.
English Law:—
S. 114, Public Health Act, 1875.

Recent changes.—The sub-S. 1 has been substituted by S. 41 of the Punjab Amendment Act, 111 of 1933. The local Government has obtained powers to force committees to act under this section whenever the places licensed or registered under the preceding sections appear to be a source of nuisance to the neighbourhood or likely to be dangerous to life, health or property.

Distinction between Sections 121 and 123.—S. 121 deals with places unregistered or unlicensed while S. 123 deals with places registered or licensed. No place can fall at one and the same time under both sections and there can be no conviction with reference to the one and the same place under both sections.

S. 123 does not apply to a place neither licensed nor registered, when a conviction is had under S. 121 or S. 123 of the Act, the punishing section must be S. 121 or S. 123 and cannot be S. 219, this last section punishing disobedience to written notices lawfully issued by a municipal committee only applies when such disobedience is not an offence under any other section of the Act. If a conviction be under S. 121 (5) any reference to notice issued by a municipal committee is wholly irrelevant. *Cf. P. R. 4 of 1894 Cr.*

See 9 I. C. 886 noted on p. 257 ante.

Dangerous to life.—Ordinarily any large machinery is dangerous to human life but one cannot presume it with reference to any particular machinery. 1924 Mad. 375.

Under a corresponding section of the Bombay District Municipal Act it was *held* that in order to render a person liable to conviction and punishment under the section it must be proved (i) that a notice has been given and (ii) that he uses the place in question or permits it to be used in such a manner as to be a nuisance to the neighbourhood or dangerous to life, health or property. The mere fact that notice in due form was given regarding the place on a particular date cannot be conclusive evidence that there has been use of the place in such a manner as to be a nuisance after that date.

For the issue of the notice under clause (1) it is only the committee that has to satisfy itself and its opinion cannot be questioned but under clause (2) the committee has to prove that the premises are being used in a manner so as to cause nuisance, etc., and the committee's decision under clause (1) does not debar the accused from putting in his defence. 18 I. C. 111.

Jurisdiction of Civil Courts.—The Act gives a municipality power, if it be shown to their satisfaction that any place used for the purpose of a lime-kiln is, or is likely by reason of such use and situation to become, a nuisance to the neighbourhood, or is so used, or situated as to be likely to be dangerous to life, health or property, by written notice to require the owner or occupier at once to discontinue the use of, or at once to desist from, carrying out or allowing to be carried out the intention to use, any such place for the purpose of a lime-kiln. Therefore, if there is a lime kiln within the limits of the municipality, they are the judges as to whether it is, or is likely to become, a nuisance to the neighbourhood, and the court will not interfere with the exercise of that power unless it can be shown that they have exercised it in an improper manner. It is only for the purpose of seeing whether the municipality have exercised their power in the proper way that the court will consider the evidence to see what steps the municipality took before they issued the notice. 44 Bom. 738, 57 I. C. 988.

In this case the committee acted on the report of its health officer and it was *held* that the committee could not be said to have acted in a manner not recognised by law.

Appeal.—The order under S. 123 is appealable under S. 225 of the Act.

Daily fine.—See Notes to S. 219.

124. (1) No person shall use or employ in any factory or other place any whistle or trumpet, or any other mechanical contrivance which emits an offensive noise for the purpose of summoning or dismissing workmen or persons employed, nor

Use of
steam whis-
les, etc.

shall any person by means of any contrivance increase the noise emitted in any such factory or place by the exhaust pipe of any engine, without the written permission of the committee, in granting which, the committee may impose such conditions as it may deem proper, restricting the times at which such whistle or trumpet, or other contrivance may be used.

(2) The committee may on giving one month's notice revoke any permission given under sub-section (1).

(3) Whoever, in contravention of the provisions of this section, uses or employs any *whistle trumpet or other contrivance* shall be punishable with a fine which may extend to fifty rupees, and with a further fine which may extend to five rupees for every day during which the offence is continued.

Notes.

This section is new and is based on S. 393 of the Bombay Act, III of 1888.

Clause (1) of the section has been substituted by Amendment Act, III of 1933. The section has now been made applicable to all municipalities and no previous extension by Government is necessary.

In clause (3) the words in italics have been substituted for words "steam whistle steam trumpet". Noise emitted by the trumpet or whistle, etc., should be offensive for action under this section. For the meaning of the word offensive *see* Notes on page_____. Offensive does not necessarily mean injurious to health. Offensive means noise affecting sense of hearing. If the noise causes discomfort or nuisance, it will be offensive.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers of S. 124 can be delegated under S. 33 (a).

Drains and Privies.

125. (1) The committee may, by notice, require the owner of any building or land to provide, move or remove any drain, privy, latrine, urinal, cesspool or other receptacle for filth or refuse, or, provide any additional drains, privies, latrines, urinals, cesspools or other receptacles as aforesaid which should in its opinion be provided for the building or land in such manner and of such pattern as the committee may direct.

Provision
of drains,
privies, etc.

(2) The committee may, by notice, require any person employing more than twenty workmen or labourers to provide such latrines and urinals as it may think fit and to cause the same to be kept in proper order and to be daily cleaned.

(3) The committee may, by notice, require the owner or occupier of any building or land to have any privy, latrine or urinal provided for the same shut out by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the neighbourhood, or to remove or alter, as the committee may direct, any door or trapdoor of a privy, latrine or urinal opening on to any street or drain.

(4) The committee may, and when required by the local Government shall, provide latrines and urinals for the use of the public.

Notes.

S. 122 of the old Act with certain alterations. The word "move" has been added between "provide" and "or remove." The words "of such pattern" have been added after the words "in such manner." The provision as to the making or maintaining a drainage connection has been omitted, so is the proviso to clause (1) of the old Act.

Recent changes—by S. 43 of the Punjab Amendment Act III of 1933 the proviso to clause (2) has been omitted and clause (4) has been added. Committees have been empowered to provide latrines and urinals for the use of the public. The discretionary duty may be made compulsory by the local Government.

Non-compliance with the notice is punishable under S. 219.

Analogous Law:—

Ss. 224 & 225, Bengal District Municipal Act, 1881.
 Ss. 258, 259 & 63, Bengal Municipal Act, XV of 1932.
 Ss. 214, 217 & 238, Behar and Orissa Municipal Act, 1922.
 Ss. 129, & 134, Bombay Municipal Boroughs Act, 1925.
 S. 101, 106 & 108, Bombay District Municipal Act, III of 1901.
 Ss. 231, 248, 249 (2), 250 (3) & 257, Bombay City Municipal Act, III of 1888.
 S. 137-A, Burma Municipal Act, III of 1898.
 Ss. 260-1, 269, 270, 271 & 278, Calcutta City Municipal Act, III of 1923.

Ss. 133 & 135-37, Cantonment Act, II of 1924.
 S. 106, Central Provinces Municipal Act, II of 1922.
 Ss. 186, 187 & 189, Madras City Municipal Act, 1919.
 Ss. 143, 146-47, 149 & 155, Madras District Municipal Act, V of 1920.
 S. 98, Rangoon City Municipal Act, 1922.
 Ss. 267 & 268, U. P. Municipalities Act, 1916.

English Law:—

Ss. 36 & 39, Public Health Act, 1875.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by

executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under S. 125 can be delegated to Medical Officer of health under Section 33 (b).

Commission of nuisance under order of committee.—The orders of the municipality do not justify the commission of a nuisance. Under the corresponding section of the old Bombay District Municipal Act it was *held* that the terms of the section are not imperative in requiring a municipality to call upon the owners of a house to build a privy but are permissive, leaving it to the discretion of the municipality to determine when the power conferred on them shall be exercised. Accordingly where the plaintiff complained that the defendants had erected a privy so close to his house as to be a nuisance and the appellate court found it to be a nuisance but rejected the plaintiff's claim on the ground that the defendants had erected the same under orders of the municipality: *Held*, reversing the decree of the lower appellate court, that the municipality had no authority to order defendants to erect the privy regardless of the plaintiff's right and that the defendants therefore could not plead that they acted under order of the municipality. 12 Bom. 634.

The erection of a latrine under the orders of a municipality in a place approved by the latter does not render the owner immune from an action by a neighbouring owner or occupier for nuisance caused to him by the latrine.

Though the Municipal Act has authorized the council to direct the location of the latrine in a particular place, the work should not be carried out so as to injuriously affect private interests more than is necessary.

The power given to a municipality to supervise the erection by a private individual of a latrine must be regarded as a permissive obligation which should be exercised without unnecessary detriment to private rights and without creating an unreasonable nuisance.

The person complaining of the nuisance has a right of action to prevent the use of the building as a latrine, but no decree should be passed for the demolition of the building.

The provision in S. 218 of the Madras District Municipalities Act corresponding to S. 224 of the Punjab Municipal Act for award of compensation by the municipal council for damage caused by the exercise of its power does not interfere with the common law rights of injured parties. 42 Mad. 796.

Clause (4). Distinction between permissive and obligatory duties of corporations.—There is a well-marked distinction be-

tween permissive and obligatory duties; rules and the limitations applicable to the two branches of duties were stated in 42 Mad. 331 and 42 Mad. 796. "If an act is only permitted by the statute to be done, the corporation is practically under the same obligations to respect the rights of others as a private individual. The corporation should so perform the duty as not to injure private rights. Further the duty must be done without negligence and with care. There is no distinction between misfeasance and non-feasance in such cases. The position of a corporation, which is bound to carry out certain duties, is different. In enjoining the performance of them the legislature contemplates the fact that private individuals will have to submit to a certain amount of infraction of their rights. The principle is that where the legislature directs a duty to be done, it must be deemed to have weighed the balance of convenience between public benefit and private rights and to have laid down that the latter should give way to the former. But the private individual is not altogether without remedy even in such cases. If the work has been done negligently or carelessly, the corporation will be liable. The corporation will also be liable where it acts maliciously and with a wanton desire to injure private rights. But it is not liable for mere non-feasance."

Powers under Section 125 when the latrine has been constructed with permission.—There is no provision under the Act which debars a municipal committee from taking action under S. 125 in the interests of public health solely because it has previously given sanction to the construction of the building under section 193. *Cf.* 21 A. L. J. 828; 1924 All. 157.

Cesspool.—The ordinary meaning of cesspool is a pit into which a drain discharges its contents. The word "drain" means not merely a water channel but a channel used for the flow of offensive matter. A pit can be called a cesspool. It must be shown that offensive matter is discharged into it.

Two masonry reservoirs were constructed—one to receive surplus rainwater from the roof of a house and the other to receive rice water from the kitchen. No offensive matter was allowed or was intended to be carried into these reservoirs: *Held* these reservoirs were not cesspools. 40 I. C. 552.

Latrine.—The word is wide enough to include conveniences with water connections and has been adopted in Indian Municipal Acts as the most general description of the conveniences of the kind. It includes a water closet. 50 I. C. 247.

Owner.—When the building belongs to one person and the site to another, the owner of the site is not the person responsible to carry out the requirements of the section. Cf. 20 Bom. 617.

A rent contractor falls within the definition of owner and as such is the person who under S. 125 is liable to comply with the requisition of the committee. 1928 Bom. 527; 53 Bom. 131; 30 Bom. L. R. 1442.

Lessee is the owner in reference to a sub-lessee. 1928 Bom. 528; 30 Bom. L. R. 1442, 112 I. C. 861.

Notice must conform to the terms of the section.—The notices cannot call upon owners to do anything not required by the section. A notice requiring the urinal to be constructed in a particular place was held to be *ultra vires*: 24 Bom. 75. Under a corresponding section of the City of Bombay Municipal Act a notice calling upon the owner to make an open drain in the *gully* on the west of his premises adjoining the west wall of his building was held to be *ultra vires*. 29 Bom. 35.

The notice calling upon private owners to provide latrines and urinals should comply with the provisions of the statute. If the notice is *ultra vires*, as for instance, where it requires urinals to be constructed in a particular place, it need not be complied with: 24 Bom. 75. If the notice contains two directions, one of which is good and the other bad, it must be treated as bad in its entirety. To hold otherwise would impose on the accused the obligation of picking out from the notice the requirement which was within the power of the municipality to call upon him to carry out. There is nothing, of course, to prevent the municipality from issuing a fresh notice. 1 Weir 749 & 1933 Lah. 935.

Time for Compliance.—No time is fixed in the section within which the works required by the committee are to be executed. The committee should put such time as will be reasonably sufficient for the compliance of the notice. If the time given is not sufficient, the person making default in compliance is not liable for the disobedience of the notice and if the committee itself carries out the work under S. 220, it cannot recover the costs of its execution under S. 222: 50 I. C. 247. See also *Bristol Corporation v. Sinnott*, (1918) 1 Ch. 62.

General powers of local authority as to latrines.—S. 36 of the Public Health Act, 1875, which empowers a local authority to give notice requiring the owner of a house to provide a sufficient watercloset, earthcloset, or privy, and in

case of non-compliance, does not empower the local authority to enforce a general resolution that in all such cases within their jurisdiction a particular system shall be adopted; the authority is bound to exercise its discretion in each particular case, and consequently a notice in accordance with the general resolution, and requiring compliance with its provisions, is invalid, *Wood v. Widnes Corp.* (1898) I. Q. B. 463; *Tinkler v. Wandsworth Board of Works* (1858), 62 J. P. 216. They have no power to require the owner to supply any particular kind of water-closet; they have only power to require him to supply a sufficient one: *Robinson v. Mayor, etc. of Sunderland* (1898) 62 J. P. 216. When a local authority proceeds to enforce improper requirement as above indicated an injunction will lie to restrain them. If, however, the owner allows them to do the works, he may raise objection on their seeking to recover from him the amount expended.

Litigation between landlord and tenant—no bar to action under Section 125.—The pendency of a suit for ejectment against the tenant or the existence of an injunction against the owner of the premises restraining him from taking possession of the premises would not be sufficient to relieve the owner from liability from conviction for non-compliance with a notice under S. 125 requiring him to erect a latrine connected with the premises. One cannot entirely overlook, however, the existence of such proceedings in considering the gravity of the offence and in determining the proper sentence. 1929 Cal. 490; 119 I. C. 369.

Notice to remove without specifying another place.—Since a municipality has a statutory power to direct demolitions or closing of latrines, a notice under S. 207*, Act IV of 1884 by a municipality to a person to remove a latrine and to erect it in another place, without specifying the place to which it should be removed, is not *ultra vires*. 1927 Mad. 1125.

Alteration in the interests of neighbours.—The view that any alteration to latrine to be ordered by a municipal council by a notice under S. 207, Madras Act, IV of 1884, should be in the interests of the owner or occupier of the building to which it is attached, is a misreading of the section. The intention is to empower the municipality to take order with latrines in the interests of the general public and in particular of the neighbouring residents. 1927 Mad. 1125, 100 I. C. 645.

Alteration of trap-door of the latrine.—When a person puts in the trap-door to the privy to the south opening on to

* S. 125 of the Punjab Municipal Act.

a street with the permission of the committee it is open, under the discretionary powers given by S. 125 (3) to the municipality if they consider it to be a nuisance to order him to alter it to the east. Cf. 1930 Bom. 43; 124 I. C. 105.

Notice calling upon owner to provide access.—Whether* proper access is available to a privy by people living in a particular portion of a house is a question in which the corporation is not *prima facie* interested. The tenants having just grievance can take such step for securing proper access as the law provides but the corporation is only entitled under the Municipal Act to see that the privy is in a sanitary condition, and the privy accommodation is sufficient. A requisition by the corporation that proper access should be provided to a privy is not, therefore, covered by S. 125. Cf. 1930 Cal. 185, 51 C. L. J. 469.

In such manner.—The notice itself is to contain the direction as to the nature and position of the required latrine. The law does not contemplate delegation to an individual officer of the power to give necessary directions, though the committees are at liberty to guide themselves by the advice of any expert in their employ.

A notice therefore requiring the construction of a latrine and directing the owner to apply to the Health Officer and to construct the latrine in accordance with such order as he may give, is bad. 48 I. C. 882.

Jurisdiction of Civil Courts.—When a municipality acting under the powers conferred by the Act, decides that certain works are necessary that conclusion in the absence of *mala-fides* or fraud or considerations of that nature, cannot be questioned in a civil court.

The municipality has a right to require the removal of a *pucca* privy. 26 Cal. 811.

It appears from *Austin v. Vestry of Lambeth* (1840), 4 Jur. (N. S.) 274, that it is for an authority to decide whether their directions are complied with in regard to the materials to be used. A vestry ordered a drain to be made with pipes of stoneware of the best kind and quality, but the builder laid down Aylesford pipes, and the vestry declared that these were not stoneware and proceeded to remove them. Stuart, V. C., held that it was for them to determine the question, and refused an interlocutory injunction. His decision was confirmed (27 L. J. Ch. 389, 392); and the bill was afterward dismissed with costs, the vestry not having acted capriciously or vexatiously. 4 Jur. (N. S.) 1032. The authority must also determine the size of the drain.

The local authority has a discretion in deciding upon the character of the drain required, and if such discretion is justly exercised, it will not be interfered with by a court of law. It has also powers to determine the materials of which a drain should be made, and the size and the level of the fall thereof. Where a municipality acting within the statutory powers regarding sanitation and public health, does an Act, the civil courts have generally no power to call the act in question. It is only in cases where a municipality acts beyond its statutory powers that the civil courts can interfere: Where a municipal board, acting within its statutory powers, directed the diversion of a drain, having regard to the sanitation of the town and the comfort of the public, a suit brought in a civil court questioning the act is unsustainable. (1905) A. W. N. 79.

If the house owner does not comply with the requisition of the local authority, the local authority has power to do the work required and recover the expenses incurred from the owner: *Meyrick v. Pembroke Corporation* (1912 (76 J. P. 365)); and if, in the doing of the work by the local authority, higher rates have been charged than could have been obtained by other persons, the courts cannot interfere: 26 Cal. 811. The owner of a house may agree with the local authority that they shall construct a house drain which they might compel him to construct; and such an agreement is a valid agreement, even though the preliminary notice has not been given. *Hall v. Mayor of Batley* (1877) 47 L. J. Q. B. 148.

Waiver of notice under section 125.—If on a notice issued by the committee or the executive officer, negotiations ensue which are tantamount to promise to reconsider:

Held, that on a notice being served by the municipal commissioner of Bombay, under S. 231 of Bombay Act, III of 1888, if negotiations ensue, which are tantamount to a request by the party, served with the notice, and a consent by the commissioner, to reconsider the matter, such negotiation will have the effect of waiving the notice, and it is competent to the commissioner to issue a fresh notice after the negotiations have closed. Limitation, in this event under S. 514 of the Municipal Act, will not run from the original notice. 29 Bom. 35, 6 Bom. L. R. 667.

Jurisdiction of Civil Courts to restrain exercise of power under the Act.—The municipality desired by a notice under S. 125 the removal of a latrine called Sandas which was alleged to have been newly constructed. The owner brought a suit for injunction claiming that the latrine in question is

not new and that it is not insanitary and that the defendant board had absolutely no right to get it demolished. The municipal board contended that civil court had no jurisdiction to entertain such a suit: *Held*, the powers conferred on a municipal board by S. 125 of the Municipal Act are very wide. The legislature in its discretion has vested the board with absolute power to direct the closing or removal of any latrine, etc., without assigning any reason for such direction. Cases are conceivable in which a board may be actuated by malice in passing an order under S. 125 of the Municipal Act. But even in any such a case the civil court is powerless to grant any relief to the person aggrieved by that order. *Cf.* 1927 All. 432; 101 I. C. 446.

It was also *held* that a suit by an owner of a house for perpetual injunction restraining the municipality from demolishing a latrine in the plaintiff's house is maintainable in the civil court, the object of the suit being to prevent an infringement of the plaintiff's proprietary rights by the municipal board but if a board goes beyond the powers conferred on them by the Municipal Act or if the board are assuming to themselves the authority which the law does not give them no doubt their action can be challenged by a suit in the civil court. But if they confine themselves with the exercise of power which the legislature has seemed fit to confer upon them, the statutory powers are sufficient answer to any suit that may be brought. Much of the apparent conflict in cases on the question as to the jurisdiction of civil courts to question the exercise of powers by committees will disappear if the question of jurisdiction of the civil courts is not confused with the question whether or not a valid defence is available to the defendant in a suit. 1927 All. 432; 101 I. C. 446.

The sole judge of the question whether on sanitary grounds it is advisable to direct the closing of a latrine etc., is the municipal board and no court can call into question the propriety of an order passed by the board under that section 1927 All. 432, 101 I. C. 446.

A prosecution under S. 271* of Bengal District Municipal Act, 1884 is not justified unless the objection is disposed of according to terms, of the law and laid down under S. 178. A person need not comply with the orders mentioned in the notice under S. 178 if he have filed an objection. If the objection is decided in his favour then the notice is cancelled. If it is decided against him, then the decision cannot have the retrospective effect of punishing him for the default committed by him with respect to the first notice. 1922 Pat. 183; 66 I. C. 417.

* Corresponds to S. 219 of Punjab Municipal Act.

It is within the jurisdiction of a Court, in the case of an actual nuisance, to insist upon the owner of the latrine or other source of nuisance taking due care for preventing offensive smells from them and causing private nuisance to his neighbour. The defendant in such cases could be ordered to build his latrine after the latest scientific pattern with trap-doors etc. which would minimise the chances of its being a source of trouble and inconvenience to neighbour. He could also be restrained in regard to its capacity being over-taxed and thus becoming an inevitable source of private nuisance. He could as well be ordered to take such precautions as regards its user as would prevent its causing injury to the health of the inmates of his neighbours' houses.

For a Court to decide rightly whether a particular nuisance is one in that the inconvenience is only to the public or there is a special injury to a particular individual, sanitary or medical expert evidence is of very great value and is an absolute necessity. 1927 Nag. 236.

Repair and
closing of
drains, pri-
vies, lat-
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126. (1) The committee may, by notice, require the owner or occupier of any building or land to repair, alter or put in good order any drain, privy, latrine, urinal, cesspool or receptacle for any filth or refuse, or to close any drain, privy, latrine, urinal or cesspool belonging thereto.

(2) The committee may, by notice, require any person who may construct any new drain, privy, latrine, urinal, cesspool or receptacle for filth or refuse without its permission in writing or contrary to its directions or regulations or to the provisions of this act, or who may construct, rebuild or open any drain, privy, latrine, urinal, cesspool or receptacle for filth or refuse which it has ordered to be demolished or stopped up or not to be made, to demolish the drain, privy, latrine, urinal, cesspool or receptacle, or to make such alteration therein as it may think fit.

Notes.

S. 123 of the old Act.

Analogous Law:—

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| S. 229, Bengal District Municipal Act, 1884. | Ss. 278. & 284, Calcutta City Municipal Act, III of 1923. |
| S. 263, Bengal Municipal Act, XV of 1932. | S. 137, Cantonment Act, II of 1924. |
| S. 217, Behar and Orissa Municipal Act, 1922. | S. 107, Central Provinces Municipal Act, II of 1922. |
| S. 135, Bombay Municipal Boroughs Act, 1925. | S. 214, Madras District Municipal Act, IV of 1884. |
| S. 107, Bombay District Municipal Act, III of 1901. | Ss. 267 & 268, U. P. Municipalities Act, 1916. |
| Ss. 232 & 146-A, Bombay City Municipal Act, III of 1888. | <i>English Law:—</i> |
| S. 137,—B. (2), Burma Municipi- | S. 35, Public Health Act, 1875. |

pal Act, III of 1898.

Executive Officers Act.—Powers under this section shall not be exercised by committee but may be exercised by executive officer in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under this section can be delegated *vide* S. 33 clauses (a) and (b).

Comments.—Non compliance with the notice is punishable under S. 219.

A notice under this section must be confined to the removal of insanitary defects. A notice under that section which complains of matters other than sanitation, *e.g.*, dangerous structure or a nuisance in the sense of a danger on the highway is not a good notice and a disobedience of such a notice is not an offence. Where a committee objected to a cesspool because it was uncovered and passers-by were likely to fall into it, it was *held* that action could not be taken under this section. *Cf.* 42 All. 485, 58 L. C. 146.

Interference by Civil Courts.—The municipal committee were held to be justified in diverting the flow of waste water of a certain *Dharmasala* by conveying it through a new masonry drain which emptied itself into a *katcha* drain in a public street. The inhabitants of the street could only object if their rights were interfered with by diversion and merely to that extent.

Municipal committee will be guilty of trespass if it goes over the property of others and interferes with it. Public bodies like municipal committees should act in accordance with the procedure provided by the statute governing their acts, but where with the tacit consent and acquiescence of the persons interested in a property they have acquired a footing with respect to the discharge of its waste water and do an act which has caused no damage but improved its conditions, interference by a court of justice would not be equitable. P. R. 78 of 1901.

The committee is the primary body to determine when its power is to be exercised and the court will not interfere unless it has used its power in a wanton manner or in bad faith. 1930 Lah. 477.

Notice must conform to the requirements of S. 126.

The commissioner can under S. 257 requisition work to bring the condition of the privy or water closet within the previous provisions of the chapter with regard to their construction and maintenance, and nothing whatever is said throughout the chapter with regard to the water supply. The commissioner is not entitled to give a notice under S. 257 (1) directing the landlord to maintain the water closet

in good order by pumping a sufficient quantity of water into the cistern. 81 I. C. 616; 1924 B. 337.

Notice under S. 126 for requirements falling under S. 125 is wrong especially if the officers authorized to issue the notice under the two sections are different. *Cf.* 1924 Bom. 70; 81 I. C. 972.

Right of easement.—Acquisition of a right of easement with respect to drain is no bar to committee's taking action under the section requiring the removal of such a drain. 26 I. C. 781.

Construction of a new drain etc.—S. 126 (2) is not applicable where a person rebuilds a portion of the screening wall of a privy, which had fallen down, without the sanction of the committee. 35 All. 375, 20 I. C. 405.

Removal of drains.—Under this section the committee can only require repairs or closing of drains and cannot ask for their removal. *Cf.* 20 I. C. 358.

The municipality can call upon the owner to alter, repair or put the privy in good order in such manner as it thinks fit, but it could not virtually deprive the owner of the privy of the use of it. 1881 P. J. 60; 1885 P. J. 131.

Sanction to build cannot be revoked.—A sanction given for the construction of a privy cannot be revoked. 47 I. C. 145.

Unauthorized
building
over drains,
etc.

127. The committee may, by notice, require any person who without its permission in writing may newly erect or rebuild any building over any sewer, drain, culvert, water-course or water-pipe vested in the committee to pull down or otherwise deal with the same as it may think fit.

Notes.

S. 124 of the old Act.

Analogous Law.—

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| S. 202, Bengal District Municipal Act 1884. | S. 110, Central Provinces Municipal Act, II of 1922. |
| S. 138, Bombay Municipal Boroughs Act, 1925. | Ss. 166-7, & 181, Madras City Municipal Act, 1919. |
| S. 110, (2), Bombay District Municipal Act, III of 1901. | Ss. 128 & 142, Madras District Municipal Act V of 1920. |
| Ss. 223, 268, Bombay City Municipal Act, III of 1888. | S. 121, Rangoon City Municipal Act, 1922. |
| S. 253, Calcutta City Municipal Act, III of 1923. | S. 236, U. P. Municipalities Act, 1916. |
| S. 188, Cantonment Act, II of 1924. | <i>English Law.</i> — |
| | S. 26, Public Health Act, 1875. |

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by execu-

tive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under S. 127 can be delegated under S. 33 (a).

Newly erect.—This section will not empower the committee to require the demolition of the building if it has stood for some time.

128. (1) The committee may, by notice, require any owner or occupier on whose land any drain, privy, latrine, urinal, cesspool or other receptacle for filth or refuse for the time being exists within fifty feet of any spring, well, tank, reservoir or other source from which water is or may be derived for public use, to remove or close the same within one week from the service of such notice.

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(2) Whoever, without the permission of the committee, makes or keeps for a longer time than one week after notice under this section any drain, privy, latrine, urinal, cesspool or other receptacle for filth or refuse, within fifty feet of any spring, well, tank, reservoir or other source from which water is or may be derived for public use, shall be punishable with fine which may extend to fifty rupees ; and, when a notice has issued, with a further fine not exceeding five rupees for each day during which the offence is continued after the lapse of the period allowed for removal.

Notes.

Ss. 125 and 156 of the old Act. The fine has been raised from Rs. 20 to Rs. 50 by the Amendment Act, II of 1923.

Analogous Law:—

S. 230, Bengal District Municipal Act, 1884.
S. 261, Bengal Municipal Act, XV of 1932.
Ss. 215 & 232, Behar and Orissa Municipal Act, 1922.
Ss. 279 and 280, Calcutta City

Municipal Act, III of 1923.
Ss. 128 & 188, Central Provinces Municipal Act, II of 1922.
Ss. 220 & 226, Madras District Municipal Act, V of 1920.
S. 227, U. P. Municipalities Act, 1916.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation. - Powers under the section can be delegated *vide* S. 33, clauses (a) & (b)

129. Whoever, without the permission of the committee, causes or knowingly or negligently allows the contents of any sink, sewer or cesspool, or any other offensive matter to flow,

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drain or be put upon any street or public place, or into any irrigation channel or any sewer or drain not set apart for the purpose, shall be punishable with fine which may extend to twenty rupees.

Notes.

S. 153 of the old Act.

Recent changes.—For the word “water” the word “contents” has been substituted as more appropriate. The words in italics have been added *vide* S. 44 of the Punjab Amendment Act, III of 1933.

Public place.—See definition of this term in S. 3 (17).

Analogous Law:—

S. 270 (2), Bengal District Municipal Act, 1932.	Ss. 258 (c), & 372 (f), Bombay City Municipal Act, III of 1888.
S. 254, Bengal Municipal Act, XV of 1932.	S. 287 (e), Calcutta City Municipal Act, III of 1923.
S. 212 (2), Behar and Orissa Municipal Act, 1922.	S. 94, Cantonment Act, II of 1924.
S. 159, Bombay Municipal Boroughs Act, 1925.	S. 208, Central Provinces Municipal Act, II of 1922.
S. 128 Bombay District Municipal Act, III of 1901.	S. 159, Madras District Municipal Act, V of 1920.
	S. 276, U. P. Municipalities Act, 1916.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under this section can be delegated, *vide* S. 33 (a)

Drains.—The drains or sewers referred to in the section are public drains or sewers vesting in the committee. *Cf.* 10 C. W. N. 667.

Want of drains.—The absence of the drains is no excuse for allowing the water to flow on the street. The provision of drains by the municipality is not a condition precedent to the obligation imposed by the section on the owners and occupiers of houses. 15 Mad. 91 and 30 Mad. 220; 1924 Mad. 397; 76 I. C. 760

Offensive matter.—Mere dirty water or waste water is not offensive matter. 20 Bom. 83.

Street.—A defendant was charged under S. 4 of the Madras District Municipalities Act with allowing offensive matter to flow from his house into a street. The matter flowed into a drain or ditch constructed along the side of the roadway. On the question as to whether any offence had been committed:

Held, that a 'street' is any way or road in a city having houses on both sides ; and that in consequence this definition excluded the drain or ditch on either side of the roadway ; that the drain was not part of the 'street' and that the offence charged had not been committed. 28 Mad. 17.

What, then, is its ordinary meaning ? Jessel, M. R., in *Taylor v. Corporation of Oldham* (2) accepts the following definition laid down in the Imperial Dictionary. "A street is properly a paved way or road but in usage any way or road in a city having houses on one or both sides."

This definition excludes what is called in this case the 'drain' or 'ditch' on either side of the roadway and we must hold therefore that this drain is not part of the street. 1 Weir 916; 28 Mad. 17.

Note. Under this Act drain is a part of the street.

Right of private person to restrain the commission of nuisance.—Under municipal law no private person can claim a right to foul an ordinary drain by discharging into it what it was not intended to carry off and then throw on the municipality an obligation to alter the drain in order to remedy the nuisance that he was produced.

Where the defendant, the owner of a shellac factory, discharged into the municipal drain which was not constructed or intended for carrying off such stuff, refuse liquid of an offensive character which interfered with the ordinary comfort of plaintiff's occupation of property and caused him special injury:

Held, that the plaintiff was entitled to restrain him.

Where moreover the defendant discharged the liquid into the drain knowing from the condition of the drain and the nature of the liquid that it could not be efficiently carried away but must stagnate, decompose and create a nuisance:

Held, that the defendant must be responsible for the necessary consequences of his action and was not entitled to shift the responsibility on to the municipality by contending that if the latter would improve the drain, there would be no nuisance. 32 Cal. 697.

130. Whoever, without the permission of the committee, makes or causes to be made, or alters or causes to be altered, any drain leading into any of the sewers or drains vested in the committee shall be punishable with fine which may extend to fifty rupees.

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Notes.

S. 155 of the old Act.

Analogous Law:—

S. 226, Bengal District Municipal Act, 1884.

S. 273, Bengal Municipal Act, XV of 1932.

S. 221, Madras District Municipal Act, V of 1884.

S. 191 (2), U. P. Municipalities Act, 1916.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under this section can be delegated under S. 33 (a).

Renewal of drains.—The owner of a house in a street renewed without the sanction of municipality the masonry covering of a drain in front of his house: *Held*, that the act of the owner did not constitute an interference within the meaning of S. 211 of Madras Act, IV of 1884. 21 Mad. 4.

Power to
require re-
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ising from
tanks and
the like.

131. The committee may, by notice, require the owner or occupier of any land or building to cleanse, repair, cover, fill up or drain off any private well, tank, reservoir, pool, depression or excavation therein which may appear to the committee to be injurious to health or offensive to the neighbourhood :

Provided that if for the purpose of effecting any drainage under this section it should be necessary to acquire any land not belonging to the same owner or to pay compensation to any person, the committee shall provide such land or pay such compensation.

Notes.

S. 126 of the old Act.

Analogous Law:—

S. 232, Bengal District Municipal Act, 1884.

Ss. 349 & 357, (proviso), Bengal Municipal Act, XV of 1932.

Ss. 225, 228 and 233, Behar and Orissa Municipal Act, 1922.

Ss. 150 & 167, Bombay Municipal Boroughs Act, 1925.

Ss. 120 & 135, Bombay District Municipal Act, III of 1901.

S. 381, Bombay City Municipal Act, III of 1888.

S. 131, Burma Municipal Act, III of 1898.

S. 126, Central Provinces Municipal Act, II of 1922.

S. 264, Madras City Municipal Act, 1919.

S. 224, Madras District Municipal Act, V of 1920.

Ss. 225, 269 and 284, U. P. Municipalities Act, 1916.

Disregard of the orders is punishable under S. 219 of the Act. The municipality can also carry out the necessary work and recover the costs of the execution of the work under Ss. 220 and 222.

Executive Officers Act.—Powers under this section shall not be exercised by committees but may be exercised by executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under the section can be delegated under S. 33 (a) & (b).

Removal of nuisance by committees at their own cost.—In case the work is carried out by the committee and the costs are sought to be recovered from the person called upon to do the work, the latter is not competent to prove that the well, etc., was not injurious to health. 11 Mad. 341.

When default is made by the owner to comply with the notice the municipality has a discretion as to how the work should be carried out and even though the rates charged by the municipality be higher than those which can be obtained by other persons, there will be no ground for the interference of the High Court. 16 W. R. 285 Cr.

Jurisdiction of Civil Courts to interfere.—Where a taluk board in exercise of its powers under a section corresponding to the provisions of S. 131 of the Punjab Municipal Act on the materials placed before it comes to the conclusion that a particular tank is unhealthy and injurious, a civil court has no jurisdiction to enquire into the sufficiency or otherwise of these materials. But the civil court has undoubtedly jurisdiction to restrain the board from abusing its powers acting in a capricious, wanton and arbitrary manner:

Held, also that when the insanitary condition of the tank in question is caused mainly by the discharge into it of the drainage water through channels recently constructed by the board and the board insisted on the owner filling the tank, the civil court has jurisdiction to interfere because the legislature could never have contemplated such a wanton abuse of the discretionary power.

It is difficult to lay down an exhaustive rule to determine whether the action in a particular case is arbitrary or capricious. Farwell, L. J., in *Rex v. Board of Education*, (1910) 2 K. B. 165, stated the law as follows: ‘ If the public body has exercised the discretion entrusted to it *bona fide* not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally, the courts cannot interfere. They are not a court of appeal from the public body, but they have power to prevent the refusal of its true jurisdiction by the adoption of extraneous considerations in arriving at its conclusion or deciding a point other than that brought before it, in which cases the courts have regarded it as declining jurisdic-

tion." The case will be the same if the local authority instead of adoption of extraneous matters rejects the relevant matters. 44 Mad. 156, 61 I. C. 497.

Jurisdiction of magistrate to question the decision of the committee—The magistrate cannot acquit a person on the sole ground that these things do not appear to him to be unhealthy. The only condition precedent to the issue of a valid notice under this section is that those things shall appear not to the magistrate but to the committee to be in a condition specified in the section. Cf. 34 Bom. 346.

Fill up depression.—These words will not empower the committee to compel owners to fill up low-lying ground. Under a somewhat similar provision of the Bombay City Municipal Act a notice was issued to the appellant as owner of certain low-lying ground. The notice stated that in the opinion of the commissioners, the ground accumulated water in the monsoon and caused nuisance to the tenants of two *chawls* situated on the premises. The owner was therefore required by the notice "to fill in the low-lying ground with sweet earth to the level of the road and slope it towards the new drain on the roadside."

As the owner refused to comply with the notice, he was convicted and sentenced to pay a fine of Rs. 15 by the Presidency Magistrate under S. 471, Bombay Act, III of 1888 (corresponding to S. 219 of the Punjab Act):

Held, reversing the conviction and sentence, that the notice was illegal. The words used in the section are "low-ground," which is not the same as low-lying ground. And though the section gives power to the commissioner to require the owner of low ground to cleanse and fill up the same, it does not permit him to issue an order that an indefinite extent of low-lying ground shall be filled up, much less that it shall be filled up to some particular level or filled up with sweet earth or that it shall be sloped in a particular direction. 24 Bom. 125

Under this section the committee will have no power to require the owner to keep up a well which he has closed or filled up. The section does not empower the committee to annex a private well and then turn it to a public well. Cf. 70 I. C. 409; 1924 Sindh 139.

Ordering demolition instead of filling up.—A committee ordered demolition of a reservoir instead of requiring it to be filled up as laid down in S. 131. The plaintiff brought a suit for injunction to restrain the committee from preventing the plaintiff from rebuilding his reservoir and for damages. As the committee had acted in good

faith and the only mistake was that it demolished the reservoir instead of filling it up, injunction was not granted. Plaintiff was only held entitled to damages. 94 I. C. 192; 27 P. L. R. 869.

Laying and connecting pipes, sewers and the like.

132. The committee may carry any cable, wire, pipe, drain, sewer or channel of any kind, for the purpose of establishing telephonic or other similar communication or of carrying out and establishing or maintaining any system of lighting, drainage or sewerage, through, across, under or over any road, street, or place laid out as or intended for a road or street, and, after giving reasonable notice, in writing, to the owner or occupier, into, through, across, under, over or up the side of any land or building whatsoever situate within the limits of the municipality, and for the purpose of the introduction, distribution of outfall of water or for the removal or outfall of sewage without such limits, and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such cable, wire, pipe, drain, sewer or channel, as the case may be, in an effective state for the purpose for which the same may be used or intended to be used:

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Provided that no nuisance more than is necessarily caused by the proper execution of the work is created by any such operation: and

Provided, further, that reasonable compensation shall be paid to the owner or occupier for any damage at the time sustained by him and directly occasioned by the carrying out of any such operations.

Notes.

S. 120-A of the old Act.

Analogous Law:—

- S. 286, Bengal Municipal Act XV of 1932.
- Ss. 300 & 301, Behar and Orissa Municipal Act, 1922.
- Ss. 128 & 142, Bombay Municipal Boroughs Act, 1925.
- S. 100, Bombay District Municipal Act III of 1901.
- Ss. 222, 265 & 280-A, Bombay City Municipal Act, III of 1888.
- S. 94, Burma Municipal Act, III of 1898.
- Ss. 252 (c), & 266 (2), Calcutta

- City Municipal Act, III of 1923.
- S. 111, Central Provinces Municipal Act, II of 1922.
- S. 190, Madras City Municipal Act, 1919.
- S. 150, Madras District Municipal Act, V of 1920.
- Ss. 120 & 122, Rangoon City Municipal Act, 1922.
- Ss. 189 & 224, U. P. Municipalities Act, 1916.

English Law:—

- Ss. 16 & 54, Public Health Act, 1875.

This section is very important as giving very extensive powers to committees in the interests of the public. Without such powers it would be impossible for committees to establish water supply or drainage system or other public utilities.

Railway Company.—Under the powers conferred by this section the municipality is entitled to enter upon land belonging to a Railway Company. S. 12 of the Indian Railways Act does not exclude the operation of the section. *Cf.* 23 Bom. 358.

Necessity of previous notice.—No notice is necessary for carrying cables, wires, etc., through, across, under or over any place which is used as street or road or which is laid out or intended for the purposes of street or road. Previous notice is necessary when such cables, wires, etc., are to be carried through, etc., of buildings or lands.

Notice is not necessary when pipe is to be carried through or over a road or street.

The first part of S. 132 goes as far as “intended for a road or street.” There is a pause there, and the section goes on to say that a notice must be given to the owner or occupier if the committee intends to traverse “any land or building.” Clearly, then, there is a distinction between road and street on the one hand, and land or building on the other. That even if a committee is going to lay a pipe under or across a public street, it must give notice to the owners or occupiers of adjacent buildings, is a proposition that could readily be made a *reductio ad absurdum*. 1930 Lah. 526; 31 P. L. R. 196, 122 I. C. 495.

Carrying over streets.—A local authority have power to carry a sewer above a street. “It is said that if you read the word ‘through’ as authorizing the making a sewer above a turnpike road, it would enable the board to obstruct the traffic, and that it is not likely that the legislature would have conferred any such power. . . . the legislature, when conferring powers of this kind on a public authority for the public benefit, will not impute to them the desire or the intention of using them so as to obstruct the necessary traffic on a turnpike road. It is left to the discretion of the local authority whether they will carry the sewer above the turnpike road or under it, the legislature assuming that they will carry it in such a manner as not to interfere with the traffic.” *Roderick v. Aston L. B.* (1877) 5 Ch. D. 328, per Jessel, M. R., at p. 330. In this case a local board carried a sewer across the plaintiff’s pleasure grounds on such a level that the bottom of the sewer was only slightly

below the surface, and a permanent embankment about six feet high was made, and it was *held* that they had power under S. 16 of Public Health Act so to do, and that they were not obliged to carry the sewer underground.

Into, through or under.—The expression “into, through or under” manifestly does not mean to take it into, and there to leave it. It must be read, therefore, “into and through or under”; that is to say, you may take it in, and you must take it out, either by “through or under” (per Bramwell, B., in *Cator v. Lewisham B. of W.*, (1864) 34 L. J. Q. B. 74 at page 82. See also *Sutton v. Mayor, etc., of Norwich*, (1858) 6 W. R. 432, and *Selous v. Wimbledon L. B.*, (1885) 1 T. L. R. 190.

Necessity for the notice.—An injunction may be granted to restrain an authority from constructing a sewer through private lands, on the ground that reasonable notice in writing has not been given (*New River Co. v. Ware Union R. S. A.*, [1883] L. J. p. 20); but if the work was done with the owner's assent, he will not succeed in obtaining an injunction or damages merely because the preliminary requirements of the section have not been complied with: see *Long v. Fulham Vestry*, (1898) 47 W. R. 56. Nor will he as a rule succeed on technical grounds when he has had full knowledge of the authority's proposals. Thus in one case, an interlocutory injunction was applied for on the ground that reasonable notice had not been given and that the report of the surveyor did not show it to be necessary to carry the sewer through the plaintiff's land. Channel, J., refused an injunction, holding that if there were any defects in the notice or report they could easily be remedied, and the Court of Appeal also refused to interfere, *Hutchings v. Seaford U. D. C.* *Times*, November 11th, 1898. The action came on for trial, after the sewer had been laid, and the plaintiff asked for a mandatory injunction to remove it. It appeared that it was constructed across a field, and that there had been long negotiations between the parties, and in these circumstances North, J., said that it did not matter whether a week or six days' notice was sufficient, and that as it had been shown that the sewer was necessary, judgment must be given for the defendants (*Times*, November 6th, 1899).

Discretion.—In *Debry (Earl) v. Bury Commissioners* (1868-1869) L. R. 3 Ex. 121; 4 Ex. 222; 33 J. P. 424, the Exchequer Chamber ruled that “the necessity for making a new sewer being ascertained as a matter of fact, it was for the local authority to exercise their judgment in what direction that new sewer should be made through the adjoining land, and

so long as they exercised an honest discretion without misconduct or negligence, they are not liable to have their judgment overruled in a Court of Law"; *Cf. Stroud v. Wandsworth Board of Works*, (1894) 1 Q. B. 64; 58 J. P. 40.

Extent of powers.—Under this section a local board proceeded to carry a sewer across the plaintiff's pleasure grounds, on such a level that the bottom of the sewer would be only slightly below the surface, and a permanent embankment about six feet high would be made. The Court of Appeal held that they might do so, and that the Act did not confine them to carrying a sewer underground, *Roderick v. Aston L. B.*, (1877) 5 Ch. D. 328; 41 J. P. 516, *folld.* in *Morris v. Mynyddislwyn U. D. C.*, (1917) 2 K. B. 309; 81 J. P. 261. A manhole is part of the sewer, and may be made without purchasing land for the purpose, the owner of the land being entitled only to compensation for the damages arising from making it. *Swanston v. Twickenham L. B.*, (1879) 11 Ch. D. 838. But an engine house with pump and machinery erected partly above and partly below the level of the ground, for lifting and forcing sewage along a rising main from one part of a district to another where there is a common outfall, is not part of a sewer for the purposes of this section, but is a work for the purpose of receiving and otherwise disposing of sewage within S. 27 of Public Health Act, 1875, for which the necessary land must be purchased or leased. *King's College, Cambridge v. Uxbridge R. D. C.*, (1901) 2 Ch. 768. An iron pipe laid temporarily to carry off effluent water from sewage work is a sewer within this provision. *Tottenham L. B. v. Button*, (1886) 2 T. L. R. 828.

No nuisance more than is necessary caused should be created.

—These words correspond to "doing as little damage as can be" as found in "Water Works Clauses Act," 1847, in English Law. The proviso in the above section, that in the exercise of their powers the municipal committee "shall create no more nuisance than is necessary" relates to the mode of doing works authorised to be done, but does not regulate what those works should be. In order to sustain an action, special damage must be shown.

As to the meaning of the words "doing as little damage as may be," see *R. v. East and West India Docks* (1853) 2 E. & B. 466, and *Fenwick v. East London Rail. Co.* (1875) L. R. 20 Eq. 544. The corporation of a town were authorised to carry on gas works to light the town. The profits were to go partly in improving the town and partly in reducing the water rates: *Held*, that the corporation were bound to make compensation for an injury arising from the negligence of

their servants in laying down gas pipes (*Scott v. Manchester Corporation* [1857], 26 L. J. Ex. 132, 406). The servant of the defendant company, whilst breaking up a concrete pavement for the purposes of the company's undertaking and within the limits of their special Act, accidentally caused a piece of concrete to fly up and break a window in a neighbouring house: *Held*, that the company was liable for the damage so done (*Hornby v. Liverpool United Gas Co.* [1883], 47 J. P. 231).

Waiver of right of compensation or to object.—Under the powers of an Act of 1819 a water company, in 1821, opened a track and laid a pipe for the supply of water from the Crawley Spring to the City of Edinburgh, a portion of which pipe passed through the lands of Pentland and Straiton. In 1898 the Edinburgh and District Water Trustees (who had succeeded to the powers of water company) commenced an action against the owners of Straiton and the tenants of the minerals in Pentland to have it declared that they were entitled to support for their pipe, and that defenders were not entitled so to work the minerals as to injure or to bring down the pipe, and for interdict. For the defenders it was contended that there was no right of support under the Act of 1819 or at common law. The court of session decided (1) that, the Act of 1819 on a sound construction of it, contained clauses under which the owners of lands in whose ground the pipe was laid were entitled to claim for any compensation for any injury thereby occasioned to them; (2) that after the lapse of seventy years from the date when the pipe was laid it must be assumed, either that compensation had been paid or that the right thereto had been waived and (3) (following (*L. and N. W. Rail. Co. v. Evans*, [1893] 1 Ch. 16) that the statutory right to lay the pipe carried with it a right of support for the pipes and interdict was granted (*Clippens Oil Co., Ltd. v. Edinburgh and District Water Trustees* [1900], 3 Fraser. 156 affirmed H. L. [1904] A. C. 64).

For further notes see Michael and Wills on "Gas and Water," 7th Edition, pp. 157, 162 & 172, 193.

Extension of water-supply scheme competent.—in carrying out a system of water supply, extensions, additions and alterations can be done to meet new exigencies, and the argument that once a scheme of water-supply has been determined on by a committee it may carry out that scheme but it can never afterwards do anything in the way of extensions, cannot command acceptance. 1930 Lah. 526; 31 P. L. R. 196; 122 I. C. 495.

The exercise of powers does not amount to acquisition of land.—Under the corresponding sections of the Metro-

polis Management Acts, it was *held* that a sewer might be made, subject to compensation being paid, without actually taking lands under the provisions of those Acts which enable lands to be taken, *North London Rail. Co. v. Metropolitan Board of Works*, (1859) 28 L. J. Ch. 909; 23 J. P. 515, *Hughes v. Metropolitan Board of Works*, (1861) 25 J. P. 675; 4 L. T. 318; and the same view has been taken of the corresponding sections of the Public Health (Scotland) Act 1897, *Caledonian Rail. Co. v. Perth District Committee*, (1901) 3 F. 1029. Where a local authority, having power under a local Act to erect and maintain electric cable standards "on, in, over or under any street or road," erected such a standard in the pavement, it was *held* that their act, although the standard was sunk in the soil to a considerable depth, did not amount to a "taking of land." *Escott v. Newport Corporation*, (1904) 2 K. B. 369; 63 J. P. 135. Under an earlier Act, the surveyor of a local board having reported that it was necessary to make a sewer through N's lands, the necessary steps were taken and authority given to the surveyor. N obstructed the surveyor; and, being summoned before justices for so doing, contended that proceedings ought first to have been taken to acquire the land under the Lands Clauses Act. It was *held* that this was no answer to the summons, as the land need not have been so acquired before the sewer was laid in it. *Thornton v. Nutter* (1867) 31 J. P. 419. "It is said that independently of this section they (the authority) have power to purchase land, and that what they are doing is injuring the plaintiffs to such an extent, that it is equivalent to taking the whole of the land. Well, if what is done is equivalent to taking the whole of the land, the plaintiffs will get compensation for the whole of the land"; per Jessel, M. R., in *Roderick v. Aston L. B.*, p. 468, *ante*.

Avoidable nuisance must not be caused. Although the remedy of a person, who sustains damage by the laying of sewers and other communications in his lands, is to claim compensation under this section, yet a committee is liable in damages to any person who sustains injury by reason of its negligence in laying these things. Similarly the committee will be liable for the negligence of their contractor in laying a sewer. "The distinction is clearly established between damage from works authorized by statutes, where the party generally is to have compensation and the authority is a bar to an action, and damage by reason of the work being negligently done, as to which the owner's remedy by action remains": per Crompton, J., in *Brine v. G. W. Rail Co.*, (1862) 2 B. and S. 402, 411; 26 J. P. 516. This distinction was allowed in *Clothier v. Webster*, (1862) 6 L. T. 461, where the Court held that if damage was caused by the negligent laying of a

a sewer, the owner of the property damaged might bring his action, and was not put to his claim for compensation. For a case where a local authority were held liable in respect of the negligent filling in of a trench in which a sewer had been laid, see *Cox v. Paddington Vestry*, (1891) 64 L. T. 566.

Presumption that the municipality acted under Section 132.—Plaintiff alleged that a channel was originally constructed by municipality to carry water to Durgiana temple with his consent, but the water was no longer being carried and had become blocked and was creating nuisance. In a suit for a perpetual injunction to abate the nuisance caused by water running in the municipal channel being blocked, in the absence of any proof as to when, if ever, any license or grant was made by the plaintiff, it is sufficient to assume that the municipality acted without protest on the part of the plaintiff under the provisions of S. 132.

The municipal committee are not entitled under any law to keep open as a channel or as a pit passing through another person's land something which is not used by way of drainage or sewerage. These are the only relevant purposes which are mentioned in S. 132 and in the absence of these, a person whose property is damaged by accumulation of water, is entitled to an injunction against the municipal committee ordering them to close the opening passing under his house. 1933 Lah. 1003.

Compensation.—For further Notes see comments under S. 224 of this Act and Lumley's "Public Health," 10th Edition, pp. 59—61.

Nuisance.—The word is not defined in the Act, it must have therefore its ordinary meaning—anything offensive or injurious.

133. In the event of any cable, wire, pipe, drain, sewer or channel being laid or carried above the surface of any land or through, over or up the side of any building, such cable, wire, pipe, drain, sewer or channel, as the case may be, shall be so laid or carried as to interfere as little as possible with rights of the owner or occupier to the due enjoyment of such land or building, and reasonable compensation shall be paid in respect of any substantial interference with any such right to such enjoyment.

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Notes.

S. 120-B of the old Act.

Analogous Law:—

S. 287, Bengal Municipal Act,	pal Act, 1922.
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S. 301, Behar and Orissa Municipi-	pal Act, 1922.

Where a pipe is laid in a private house of any person that pipe does not become the private property of the committee under this section. 1926 Oudh 396, 93 I. C. 856.

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134. Except in cases to which Sections 203 and 205 (c) relate the committee shall cause not less than fourteen days' notice in writing to be given to the owner or occupier before commencing any operations under Section 132.

Notes.

S. 120-C of the old Act.

Analogous Law:—

S. 288, Bengal Municipal Act, XV of 1932.

S. 302, Behar and Orissa Municipal Act, 1922.

S. 113, Central Provinces Municipal Act, 1922.

The notice under Ss. 132 and 133 should not be of less than fourteen days. Where, however, on inspection of drains, etc., under S. 203 or on inspection of telephonic and other installation under S. 205 (c) it is found necessary to carry out any works under Ss. 132 and 133, then the necessity of 14 days' notice may be dispensed with.

Executive Officers Act.—The duty imposed upon the committees under this section shall not be performed by committees but may be performed by the executive officers in municipalities to which the Executive Officers Act has been extended.

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135. (1) No person shall, without the permission of the committee, at any time make, or cause to be made, any connection or communication with any cable, wire, pipe, ferrule, drain, sewer or channel constructed or maintained by or vested in the committee, for any purpose whatsoever.

(2) Any person acting in contravention of the terms of subsection (1) shall be punishable with a fine not exceeding fifty rupees.

Notes.

S. 120-D of the old Act.

This section has been amended by Act II of 1913. The section, as it stood before the amendment, did not provide any punishment for making the connections without permission. The word "ferrule" has also been added.

Analogous Law:—

S. 272, Bengal Municipal Act, XV of 1932.

Ss. 224 & 303, Behar and Orissa Municipal Act, 1922.

S. 131, Bombay Municipal Boroughs Act, 1925.

S. 102, Bombay Municipal Act, III of 1901.

S. 228, Bombay City Municipal Act, III of 1888.

S. 256-7, Calcutta City Municipal Act, III of 1923.

Ss. 114 & 185, Central Provinces Municipal Act, II of 1922.

Ss. 178 (1) & 191, Madras City Municipal Act, 1919.

Ss. 139 & 151, Madras District Municipal Act, V of 1920.

S. 191, U. P. Municipalities Act, 1916.

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Comments.—It would appear that the owners of houses have no absolute right of connecting the drains with municipal drains or sewers, and if the committees refuse such permission on sufficient grounds, the owners would have no remedy. The committee may justly refuse permission to connect a drain carrying sewage or faecal matter with a drain constructed to carry rain or surface water.

When committee once permit connection, it cannot subsequently stop it. *Clegg v. Castleford, L. B., W. N. (1874) 229.*

The provisions of S. 91, Evidence Act are not applicable to permission granted by the municipality under S. 135 for connecting the private drain with the municipal drain.

Where P sues D claiming injunction against him to restrain him from discharging filthy and waste water from his house into a *kacha* drain passing in front of P's house, he is not entitled to the relief claimed where D uses the *kacha* drain belonging to the municipality with its permission and the nuisance is due mainly to the contributory negligence of the municipal committee in not making a *pacca* drain or asking P to do it in front of his house or at least in not cleaning the existing one with the results that the water flowing into it stagnated in front of P's house. *Cf. 1930 Nag. 130, 120 I. C. 221.*

136. The committee may, at any time, establish any connection or communication from any water main, drain or sewer to any premises, or may by notice require the owner of any such premises to establish any such connection or communication, in such manner and within such time as the committee, by notice in that behalf, may prescribe, at the cost of such owner or occupier.

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Notes.

S. 120-E of the old Act.

The section has been amended by Act II of 1923, and the section is now made applicable to all municipalities without special extension.

Analogous Law:—

Ss. 272 & 289, Bengal Municipal Act, XV of 1932.

Ss. 303 & 304, Behar and Orissa Municipal Act, 1922.

S. 102, Bombay District Municipal Act, III of 1901.

Ss. 116 & 248, Central Provinces Municipal Act, II of 1922.

S. 192, U. P. Municipalities Act, 1916.

Establish connection.—If the land intervening between the owner's drain and the committee's drain does not belong to the owner, the committee cannot ask the owner to establish the connection.

Principles governing interference by courts.—Although under the powers given by the legislature a local body may act perfectly *bona fide* and *intra vires* in issuing a certain order, still if that order injuriously affects the rights of any person the latter can undoubtedly appeal to the civil courts for protection, and to that protection he will be entitled if he can prove that the order in question was made wantonly or without any reasonable justification. Therefore where a municipal committee, at the instance of a discontented neighbour, issued a notice under S. 120-E of Act, XX of 1891, (=S. 136 of the present Act), directing the plaintiff to close his old drain and to make a new drain in its place, along a different alignment, without any proper enquiry as to whether the existing drain was a menace to the health of the people surrounding it or the general public :

Held, that the civil court should under such circumstances interfere by injunction to restrain the committee from carrying out its order which was inequitable and pretended to proceed on an alleged danger to health which was in no way proved: P. R. 58 of 1907. In the course of the judgment the Honourable Judge observed, "A court is bound in all these cases to see whether the discretionary powers vested in local authorities have been, in any particular case, exercised *bona fide* and reasonably. I do not mean to say that the court is to overrule the orders of the local authority simply because it may itself consider that the order impugned was unnecessary or open to objection. That is not the true test. Before a court is justified in interfering it must find the order in question was given *mala fide*, or that it was *ultra vires* or oppressive, wanton or altogether unreasonable. Very wide powers are given by the legislature to local authorities and with the exercise of these powers, if exercised reasonably, the courts rightly refuse to interfere. But if in any case the person aggrieved thereby can satisfy the court that the order was one for which there is on the record no justification whatever, I think that it is alike the right and the duty of the civil court to interpose its authority to prevent the local body from abusing the powers conferred upon it."

137. The committee may prescribe the size of the ferrules to be used for the supply of gas, and may establish meters or other appliances for the purpose of testing the quantity or quality of any gas or electricity supplied to the premises of any person or to or for the use of any person or business.

Power to prescribe size of ferrules and to establish meters and the like

Notes.

S. 120-F of the old Act.

Analogous Law:—

S. 291, Bengal Municipal Act, XV of 1932. S 306, Behar and Orissa Municipal Act of 1922.

138. The ferrules, communication-pipes, connections, meters, stand-pipes and all fittings thereon or connected therewith, leading from mains or service cables, wires, pipes, drains, sewers or channels into any house or land, and the wires, pipes, fittings and works inside any such house or within the limits of any such land, shall in all cases be executed subject to the inspection and to the satisfaction of the committee.

Communications and connections to be made subject to inspection by and to the satisfaction of committee.

Notes.

S. 120-G of the old Act.

Analogous Law:—

S. 306, Behar and Orissa Municipal Act, 1922. Ss 291 & 301 of Bengal Act, III of 1884. S. 115, Central Provinces Municipal Act of 1922.

139. The committee may, from time to time, fix the charges to be made for the establishment by them or through their agency of communications from and connections with mains or service cables, wires and pipes for the supply of lighting, telephonage or gas, and for meters or other appliances for testing the quantity or quality thereof supplied, and may levy such charges accordingly.

Rates and charges may be fixed.

Notes.

S. 120-H of the old Act.

Cf. S. 295 of Bengal Municipal Act, XV of 1932.

140. (1) The committee may, by notice, require the owner of any building or land in any street to put up and keep in good condition proper troughs and pipes for receiving and carrying water and sullage from the building or land and for discharging the same so as not to inconvenience persons passing along the street.

Troughs and pipes for rain water

(2) For the purpose of efficiently draining any building or land the committee may by notice in writing—

(a) require any court-yard, alley or passage between two or more buildings to be paved by the owner or part

owner of such buildings with such materials and in such manner as may be approved by the committee, and
(b) require such paving to be kept in proper repair.

Notes.

S. 121 of the old Act. Clause (2) is new.

The Amendment Act of 1923 has added the words "by" the owner or part owner of such buildings" and the words "the Committee" have been substituted for "them" between "by" and "and."

Analogous Law:—

S. 239, Bengal Municipal Act, XV of 1932.	S. 189, Cantonment Act, II of 1924.
S. 183, Behar and Orissa Municipal Act, 1922.	S. 105, Central Provinces Municipal Act, II of 1922.
S. 144, Bombay Municipal Boroughs Act, 1925.	S. 183, Madras City Municipal Act, 1919
S. 114, Bombay District Municipal Act, III of 1901.	S. 166 (ii), Madras District Municipal Act, 1884.
Ss. 129 & 130, Burma Municipal Act, III of 1898.	S. 216, U. P. Municipalities Act, 1916.

Recent changes.—By S. 45 of the Punjab Amendment Act the words in italics have been added while the word "the" before water has been omitted.

Executive Officers Act.—The power conferred upon the committees under sub-section (1) of this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Jurisdiction of Civil Court.—Where plaintiffs were found not to have complied with the notices sent by the municipal committee to pave the yard with bricks so as to make it sanitary and thereafter the municipal committee itself paved it with bricks and sent bill of costs to the plaintiffs: *Held*, that the action of the municipal committee was perfectly legal within its powers and that no suit lies against it for this action. 1923 All. 371, 75 I. C. 607.

Public health.

141. Whoever,—

- (a) being a medical practitioner or a person openly and constantly practising the medical profession, and in the course of such practice becoming cognizant of the existence of any infectious disease in any dwelling other than a public hospital; or, in default of such medical practitioner or person practising the medical profession,

Information
to be given
of cholera,
small-pox,
etc

- (b) being the owner or occupier of such dwelling and being cognizant of the existence of any such disease therein ; or, in default of such owner or occupier,
- (c) being the person in charge of, or in attendance on, any person suffering from any such disease in such dwelling, and being cognizant of the existence of the disease therein,

fails forthwith to give information or knowingly gives false information to the Medical Officer of Health or to any other officer to whom the committee may require information to be given, respecting the existence of such disease, shall be punishable with fine which may extend to fifty rupees:

Provided that a person not required to give information in the first instance, but only in default of some other person, shall not be punishable if it be shown that he had reasonable cause to suppose that the information had been, or would be, duly given.

Notes.

S. 139 of the old Act with slight alteration.

The words "any infectious disease" have been substituted for the words "cholera and small-pox."

The section was amended by Act II of 1923. Before the amendment no time was fixed for giving the notice. The notice is now to be given forthwith.

Recent changes.—The words in italics have been added to S. 46 of the Punjab Amendment Act, III of 1933.

Analogous Law:—

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| S. 377, Bengal Municipal Act, XV of 1932. | S. 435, Calcutta City Municipal Act, III of 1923. |
| Ss. 61 (1) (i), 179 (2) (a), Bombay Municipal Boroughs Act, 1925. | S. 150, Cantonment Act, II of 1924. |
| Ss 48 (h) & 144, Bombay District Municipal Act, III of 1901. | S. 212, Central Provinces Municipal Act, II of 1922. |
| S. 421, Bombay City Municipal Act, III of 1888. | S. 330, Madras City Municipal Act, 1919. |
| S. 137-J, Burma Municipal Act, III of 1898. | S. 279, U. P. Municipalities Act, 1916. |
| | S. 269, Indian Penal Code. |

Infectious disease.—See S. 3 (7) for definition.

A person openly and constantly practising the medical profession.—These words will include Hakims and Vaidas also.

Comments.—The persons, on whom the obligation is laid, are (1) medical practitioners, (2) owners or occupiers and (3) persons in charge of or in attendance over the patient. A notice by one of these persons will avail for all enumerated

later in the above list but apparently not for any enumerated earlier. Thus a notice given by a medical practitioner will render it unnecessary for owners or occupiers or for the person in attendance to give the notice, but a notice given by the person in attendance will not absolve the medical practitioner or the owner or occupier from the consequences of failure to give the notice.

Where more than one medical practitioner is attending the patient, each is bound to give the notice.

Removal
hospital
patients
suffering
from infectious
diseases

142. (1) In any municipality to which this section may at any time be extended by the local Government, when any person suffering from any infectious diseases is found to be

- (a) without proper lodging or accommodation, or
- (b) living in a sarai, hotel, boarding house or other public hostel, or
- (c) living in a room or house which he neither owns nor pays rent for, nor occupies as the guest or relative of any person who owns or pays rent for it, or
- (d) lodged in premises occupied by members of two or more families and any of such occupiers objects to his continuing to lodge in such premises,

the committee, by any person authorized by it in this behalf, may, on the advice of any medical officer of rank not inferior to that of an assistant surgeon, remove the patient to any hospital or place at which persons suffering from such diseases are received for medical treatment, and may do anything necessary for such removal.

(2) The committee shall, if required by the local Government erect an infectious diseases hospital of such type and dimensions as the local Government shall deem expedient.

Notes.

S. 140 of the old Act, with this alteration that the words "infectious disease" are used instead of the words "small-pox and cholera."

Extension.—This section or the corresponding section of the previous Municipal Act has been extended to the following municipalities:—

Ambala—P. G. Notn. No. 765, dated 6th June 1892.

Amritsar—P. G. Notn. No. 479, dated 30th June 1913.

Hoshiarpur [except clause (d)]—No. 78, dated 23rd February 1893.

Dalhousie—P. G. Notn. No. 583, dated 2nd November 1912.

Gojra—P. G. Notn. No. 3184, dated 30th August 1924.
 Jhang—P. G. Notn. No. 493, dated 30th September 1892.
 Jhelum—P. G. Notn. No. 383, dated 26th July 1912.
 Karnal—P. G. Notn. No. 561, dated 12th August 1913.
 Lahore—P. G. Notn. No. 188, dated 26th April 1892.
 Lyallpur—P. G. Notn. No. 26023, dated 21st November 1924.

Multan - P. G. Notn. No. 5660, dated 12th March 1918.
 Murree - P. G. Notn. No. 379, dated 17th August 1893.
 Rawalpindi—P. G. Notn. No. 575, dated 1st December 1892.
 Sargodha - P. G. Notn. No. 660, dated 4th October 1915.
 Sialkot - P. G. Notn. No. 287, dated 22nd June 1892.
 Simla—P. G. Notn. No. 632, dated 4th November 1911.
 Wazirabad - P. G. Notn. No. 14435, dated 20th May 1924.

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Recent changes.—S. 47 of the Punjab Municipal Act has made the following changes:—

(1) In sub-clause (a) of clause 1 the words “hotel, boarding house ” have been added.

(2) In sub-clause (c) the words in italics have been inserted.

(3) Clause 2 has been added. Under clause 2 newly added the Government can make it compulsory for the municipal committee to erect an infectious diseases hospital.

Analogous Law:—

S. 378, Bengal Municipal Act, XV of 1932.

S. 265, Behar and Orissa Municipal Act, 1922.

S. 179 (2) (a), Bombay Municipal Boroughs Act, 1925.

S. 144 (2) (d), Bombay District Municipal Act, III of 1901.

S. 424, Bombay City Municipal Act, III of 1888.

S. 137-L, Burma Municipal Act, III of 1898.

S. 438, Calcutta City Municipal Act, III of 1923.

S. 250, Central Provinces Municipal Act, II of 1922.

S. 333, Madras City Municipal Act, 1919.

S. 294, Madras District Municipal Act, V of 1920.

S. 280, U. P. Municipalities Act, 1916

English Law:—

Ss. 124 & 131, Public Health Act, 1875.

Delegation.—Powers under this section can be delegated under sub-clauses (a) and (b) of section 33.

Scope of the section.—This section aims at the prevention of the spread of infectious diseases.

Resistance or obstruction to remove.—No provision is made for persons obstructing the removal. S. 221 would seem to be applicable or S. 186, I. P. C.

Cf. S. 269, I. P. C., under which persons suffering from dangerous diseases are punishable, if they act in such a manner as to spread the infection.

Where the father of a boy suffering from small-pox was directed by the Health Officer to remove him to an Isolation Hospital and the father instead took him to an isolated house: *Held*, the disobedience did not amount to an offence under S. 269, I. P. C. 53 I. C. 689.

Advice of Medical Officer.—This cannot be questioned by courts. In *Booker v. Taylor*, (1882) *Times*, November 21st, an order was made for the removal of a child under this section. The mother resisted the removal, and was summoned for so doing. At the hearing the magistrates, considering the order to be invalid, declined to convict. It was *held* that they had no right to go behind the order and examine its validity; and that they were bound to convict if there had been obstruction. This decision was followed in *R. v. Davey, ex parte Bishop*, (1899) 2 Q. B. 301; 63 J. P. 515.

Without proper lodging.—The fact that a scarlet fever patient is lodged in the parlour of a four-roomed house, the other three rooms being occupied by the rest of the family, is in itself sufficient evidence that he is without proper lodging or accommodation to justify an order under this section, for although it provides primarily for the protection of the patient, it is also directed to the protection of other persons. *Warwick v. Graham*, (1899) 2 Q. B. 191; 63 J. P. 599.

Disinfection
buildings
and articles

143. If the committee is of opinion that the cleansing or disinfecting of a building or any part thereof, or of any article therein, which is likely to retain infection, will tend to prevent or check the spread of any disease, it may, by notice, require the owner or occupier to cleanse or disinfect the same or to destroy such article in the manner and within the time prescribed in such notice.

Notes.

This section is new and has been taken from Madras District Municipalities Act, IV of 1884.

The powers are only discretionary and not obligatory as in S. 120 of Public Health Act, 1875. Failure to comply with the notice is punishable under S. 219.

Recent changes.—The words in italics were added by S. 48 of the Punjab Amendment Act, III of 1933.

Analogous Law:—

S. 379, Bengal Municipal Act, XV of 1932.
 S. 266, Behar and Orissa Municipal Act, 1922.
 S. 179 (2) (e), Bombay Municipal Boroughs Act, 1925
 S. 144 (2) (e), Bombay District Municipal Act, III of 1901
 S. 425, Bombay City Municipal Act, III of 1888.
 S. 137-O, Burma Municipal Act, III of 1898.
 S. 439, Calcutta City Municipal Act, III of 1923

S. 161, Cantonment Act, II of 1924.
 S. 121, Central Provinces Municipal Act, II of 1922.
 S. 334, Madras City Municipal Act, 1919.
 S. 290, Madras District Municipal Act, V of 1920.
 S. 277, U. P. Municipalities Act, 1916.

English Law:—

S. 120, Public Health Act, 1875.

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Comments—The present section does not authorise an authority to make any charge for the work of destroying infected articles when they act on their own initiative; but where an authority performed such work at the owner's request, the authority would probably be held to be entitled to recover any reasonable expenses incurred by them.

A medical officer of health has no power, *virtute officii* to order the destruction of infected clothing except, perhaps, in cases of great urgency (*Garlick v. Knottingley U. D. C.* [1904] 63 J. P. 494; 2 L. G. R. 1345). It was suggested in the last mentioned case that, under exceptional circumstances calling for prompt action, the medical officer might be justified in acting upon his own initiative, and one of the learned judges expressed the opinion that in any case an authority might adopt and ratify his act so as to render it for all purposes their own.

It will be observed that the word "may" is used, but it would probably be construed as imposing a duty, and not merely as conferring an option (*Julius v. Bishop of Oxford*), (1880); 5 App. Cas. 214; 44 J. P. 600.

Delegation.—Powers under this section can be delegated *vide* S. 33 (1) (a) and (b).

Notice.—This should be given by the committee itself and not by an officer upon his own initiation. A notice given

by the officer could apparently not be ratified so as to support a prosecution for non-compliance. *St. Leonard, Shoreditch v. Holmes*, (1885) 50 J. P. 132.

Owner or occupier.—The committee may select either the owner or occupier but the owner will often be unable to execute the direction and this should be considered before it is decided to serve the notice on him. Where the house is occupied, it will be safer to direct the occupier. Lumley's "Public Health," 10th Edition, p. 242.

Penalty for
letting infect-
ed house.

144. Every person knowingly letting a house or other building or part of a house or building in which any person has been suffering from an infectious disease, without having such house or other building or part thereof and all articles therein liable to retain infection disinfected to the satisfaction of the committee, shall be liable to a penalty not exceeding two hundred rupees.

For the purpose of this section a hotel or lodging-house-keeper shall be deemed to let part of his house to any person admitted as a guest into his hotel or lodging-house.

Notes.

This section was newly introduced in the Act.

Analogous Law:—

S 381, Bengal Municipal Act, XV of 1932.	S. 164, Cantonment Act, II of 1924.
S. 144 (j), Bombay District Municipal Act, III of 1901	S 340, Madras City Municipal Act, 1919.
S 433, Bombay City Municipal Act, III of 1888	Ss. 292 & 297, Madras District Municipal Act, V of 1920.
S 441, Calcutta City Municipal Act, III of 1923	<i>English Law</i> — S 128, Public Health Act, 1875.

Delegation.—Powers under this section can be delegated to Medical Officer of Health under S. 33 (1) (b).

Provision of
places and
appliances
for disinfection

145. The committee may and when the local Government so directs shall—

- (a) provide proper places, with all necessary attendants and apparatus, for the disinfection of conveyances, clothing, bedding or other articles which have been exposed to infection, and
- (b) cause conveyances, clothing or other articles brought for disinfection to be disinfected free of charge or subject to such charges as may be approved by it, and

- (c) direct any clothing, bedding or other articles likely to retain infection to be disinfected or destroyed, and shall give compensation for any article destroyed under this sub-section.

Notes.

This section is new.

The section has further been amended by Act II of 1923. Extension of the Act is not now necessary. The Government has now also power to make the duties of the committees under the section obligatory.

Analogous Law:—

S 382, Bengal Municipal Act, XV of 1932.
S 267, Behar and Orissa Municipal Act, 9/2
S 179 () (g), Bombay Municipal Boroughs Act, 1925
S 144 (f), Bombay District Municipal Act, III of 1901
S. 427, Bombay City Municipal Act, III of 1888
Ss. 442 & 445, Calcutta City

Municipal Act, III of 1923.
Ss. 157-8 & 166, Cantonment Act, II of 1924.
S. 13, Central Provinces Municipal Act II of 1922.
S. 336, Madras City Municipal Act, 1919.
S. 291, Madras District Municipal Act, V of 1920.
English Law:—
Ss. 121-123, Public Health Act, 1875.

Executive Officers Act.—The duty imposed upon the committees under clauses (b) and (c) of this section shall not be performed by committees but may be performed by the executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under clauses (b) and (c) can be delegated under S. 33 (1) (a) and (b).

146. Whoever, while suffering from an infectious, contagious, or loathsome disorder,

- (a) makes or offers for sale any article of food or drink for human consumption or any medicine or drug, or
(b) wilfully touches any such article, medicine or drug, when exposed for sale by others, or
(c) takes any part in the business of washing or carrying soiled clothes,

shall be punishable with fine which may extend to twenty rupees.

Analogous Law:—

S. 384, Bengal District Municipal Act, XV of 1932.
S 137-M, Burma Municipal Act, III of 1898.
S. 167, Cantonment Act, II of 1924
S. 213, Central Provinces Municipal Act, II of 1922.

S. 337, Madras City Municipal Act, 1919.
S. 295, Madras District Municipal Act, V of 1920.
S. 281, U. P. Municipalities Act, 1916.
English Law:—
S. 126, Public Health Act, 1875.

Acts
by
suffer
from
disorder

Notes.

This section was newly introduced in 1911.

Loathsome disease.—Leprosy will be such a disease.

ing
so as
injury-
health.

147. Whoever keeps any swine or other animals in disregard of any orders which the committee may give to prevent them from becoming a nuisance, or so as to be injurious to the health of the inhabitants or of animals shall be punishable with fine which may extend to twenty rupees, and to fifty rupees for every such subsequent offence.

Notes.

S. 157 of the old Act.

Recent changes.—S. 49 of the Punjab Municipal Act, III of 1933, has substituted the above section for the old section. The punishment has been altered, besides verbal changes effected.

Analogous Law:—

S. 265, Bengal District Municipal Act, 1884.

S. 374, Bengal Municipal Act, XV of 1932.

S. 384, Bombay City Municipal Act, III of 1888.

S. 211, Central Provinces Muni-

cipal Act, II of 1922.

S. 230 (a) (b), Madras City Municipal Act, 1919

S. 240, Madras District Municipal Act, V of 1920.

English Law:—

S. 47, Public Health Act, 1875.

Keeping.—A local authority prohibited keeping of swine within fifty yards of a dwelling-house. The accused in the course of his business, on receiving order for pigs, used to bring them into the municipal area within fifty yards of a dwelling-house in the morning and keep them there till the evening, when they were sent off outside the municipal area; the pigs were not fed at the premises nor allowed to remain there at night: it was *held* that there was nevertheless a "keeping" of the swine within fifty yards of the dwelling-house contrary to the orders of the local authority. *Cf. Steers v. Manton*, (1893) 57 J. P. 584.

Keeping of swine.—Keeping of swine is a nuisance at common law. A bye-law under S. 188 (h) may regulate pigstyes. So far as keeping of swine is concerned, it is not necessary to prove that the keeping is injurious to health. *Banbury San. Authority v. Page*, (1881) 8 Q. B. D. 97.

See also Notes under S. 109.

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148. Whoever feeds or allows to be fed any animal which is kept for dairy purposes or may be used for food on deleterious substances, filth or refuse of any kind, shall be punishable with fine which may extend to fifty rupees.

Notes.

S. 158 of the old Act.

Analogous Law:—

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|---|--|
| S. 170, Bombay Municipal Boroughs Act, 1925. | S. 209, Central Provinces Municipal Act, II of 1922. |
| S. 137-A, Bombay District Municipal Act, III of 1901. | S. 280 (c), Madras City Municipal Act, 1919. |
| S. 384, Bombay City Municipal Act, III of 1888. | S. 239, Madras District Municipal Act, V of 1920. |
| S. 169, Cantonment Act, II of 1924. | S. 242, United Provinces Municipalities Act 1916 |

149. Should the committee, on the report of the medical officer of health, consider that the water in any well, tank or other place is likely, if used for drinking, to engender or cause the spread of any dangerous disease, it may—

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by comm
of use c
wholeso
water

- (a) by public notice prohibit the removal or use of such water for drinking;
- (b) by notice require the owner or person having control of such well, tank or place to take such steps as may be specified in the notice to prevent the public from having access to or using such water; or
- (c) take such steps as it may, on the advice of the medical officer of health, consider expedient to prevent the danger or spread of any such disease.

Notes.

S. 141 of the old Act. Clauses (b) and (c) are new. The section has been amended by Act, II of 1923 by substituting "medical officer of health" for "civil surgeon or health officer."

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Analogous Law:—

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| S. 199 A, Bengal District Municipal Act, 1884 | Ss. 369 & 437, Calcutta City Municipal Act, III of 1923. |
| S. 351, Bengal Municipal Act, XV of 1932. | S. 169, Cantonment Act, II of 1924. |
| Ss. 229 & 230, Behar and Orissa Municipal Act, 1922. | S. 129, Central Provinces Municipal Act, II of 1922. |
| S. 179 (2) (c), Bombay Municipal Boroughs Act, 1925. | S. 265, Madras City Municipal Act, 1919. |
| Ss. 120 & 144 (2) (c), Bombay District Municipal Act, III of 1901. | Ss. 226 (2) & 293, Madras District Municipal Act, V of 1920. |
| S. 423, Bombay City Municipal Act, III of 1888. | Ss. 225 (2) & 226, U. P. Municipalities Act, 1916. |
| S. 136, Burma Municipal Act, III of 1898. | <i>English Law:—</i> |
| | S. 70, Public Health Act, 1875. |

Failure to comply with a notice under clauses (a) and (b) will be punishable under S. 249.

When the well is a public well, presumably the committee will itself have to take steps under the section to prevent the public from having access to it. In such a case action under clause (a) will suffice.

penalty for
selling food
of impure
nature,
substance or
quality of the
article de-
manded by
the purcha-

150. (1) Whoever sells, to the prejudice of any purchaser any article of food or drink which is not of the nature, substance or quality of the article demanded by such purchaser, shall be punishable with fine which may extend to one hundred rupees:

Provided that an offence shall not be deemed to be committed under this section in the following cases, that is to say—

(a) where any matter or ingredient not injurious to health has been added to food or drink in order to the production or preparation of the same as an article of commerce in a state fit for carriage or consumption, and not fraudulently to increase the bulk, weight or measure or conceal the inferior quality thereof;

(b) where food or drink is unavoidably mixed with some extraneous matter in the process of collection or preparation.

(2) In any prosecution under this section it shall be no defence to allege that the vendor was ignorant of the nature, substance or quality of the article sold by him, or that the purchaser, having bought such article only for analysis, was not prejudiced by the sale:

Provided that this section shall not apply to those areas to which the local Government has directed or may direct that the Punjab Pure Food Act, 1929, shall apply.

Notes.

S. 137-A of the old Act. Provisos to sub-clauses (2) (3) and of clause (1) are omitted.

Proviso to clause (2) of the section was added by Amendment Act, II of 1923, and has now been amended by the Punjab Amendment Act, III of 1933, by altering the reference to the Punjab Pure Food Act of 1929, which has repealed the Punjab Adulteration of Food Act, 1919.

Analogous Law :—

S. 251, Bengal District Municipal Act, 1884.

S. 287, Behar and Orissa Municipal Act, 1922.

S. 176 (2) (a), Bombay Municipal Boroughs Act, 1925.

S. 142, Bombay District Municipal Act, III of 1901

Ss. 406 & 407 (3), Calcutta City

Municipal Act, III of 1923.

S 118 (a) IV, V, Cantonment Act, III of 1924.

S. 214, Central Provinces Municipal Act, II of 1922.

Ss. 133 & 136, Rangoon City Municipal Act, 1922.

English Law :—

S. 2, Food and Drugs Act, (Adulteration) 1928.

Whoever.—In England it has been held that a limited company can be prosecuted under this section for selling adulterated articles. *See Booth v. Helliwell*, (1914) 3 K. B. 252. Where a grocer formed himself into a limited company of which he was a director, manager, secretary and practically the only shareholder, adulterated butter having been sold in the shop, the court held that both the company and the assistant who actually sold the butter could be prosecuted but not the grocer himself.

Guilty knowledge.—There is no necessity to prove *mens rea* in this section. *See* clause (2).

Liability of master for acts of servants.—A master is not criminally responsible for the acts of his servants, unless he expressly commands or personally co-operates with them or unless the criminal liability is imposed by statute upon him as regards the acts or omissions of his servants.

In the cases where a master is held liable for the criminal acts of his servants under a statute, the question is whether upon the true construction of the statute in question, the master is intended to be made criminally liable for the acts of his servants done within the scope or in the course of their employment. 29 I. C. 325.

This is one of the class of cases in which the legislature has, in effect, determined that *mens rea* is not necessary to constitute the offence.

Where the servant is acting altogether outside the scope of his authority, the master is not liable according to decisions of courts of Scotland. In England the authorities are conflicting. *Lindsay v. Dempster*, (1912) S. C. (J.) 110; *Elder v. Bishop Auckland etc.*, (1917) 117 L. T. 281 and *Whittaker v. Forshaw* (1919) 2 K. B. 419.

Under the corresponding section of Calcutta Municipal Act it has been held that the beneficial owner of the article is responsible for its purity. The prohibition has been held to be positive against the sale of adulterated articles and any person who is legally responsible for such a sale comes within the words "no person shall sell."

A servant, employed by his master to sell any article who adulterates it, thereby renders his master liable under the section although there is no connivance of the master. Non-connivance of the master is no defence, though the entire absence of connivance on his part may, in the discretion of the convicting magistrate, be a ground for mitigation of penalty. 14 I. C. 205; 39 Cal. 682. *Cf. Brown v. Foot*, (1892) 61 L. J. M. C. 110; 66 L. T. 649.

See 41 I. C. 977 where the liability of master for acts of servants is fully discussed and the case law was considered.

When the Act is beyond the scope of employment and when there is *mens rea* the master is not liable: 13 I. C. 101, 34 All. 46. See also 34 All. 319 where under Opium Act master was held liable for the act of servant selling opium to a boy of 14 years against conditions of license.

Liability of servant.—A servant can also be convicted under this section as the actual seller, *Hotchin v. Hindmarsh*, (1891) 2 Q. B. 181; in that case the servant of a dairy company was convicted of selling milk adulterated with water, and Lord Coleridge, C. J., said: "In my opinion, a person who takes the articles in his hand and performs the physical act of transferring the adulterated thing to the purchaser is a person who sells within this section." It should be noted that this decision does not prevent the master from being convicted as well as the servant.

Adulterated mustard oil.—Accused sold mustard oil which on analysis was found to be adulterated with *oil* oil, and the accused was convicted under S 495 of Bengal Act, III of 1899,—corresponding to S. 150 of this Act: *Held* that the adulterated oil not being what is commercially known as mustard oil and the adulteration being to the prejudice of the purchaser, the accused was rightly convicted. 30 Cal. 643

Adulteration of ghee.—As the Bengal Ghee Adulteration Act does not lay down a standard raising a presumption that ghee alleged to be adulterated is not genuine, and no standard having been fixed for the purpose by any board of experts similar to the Butter Commission in England, courts of law have to decide questions of adulteration upon such evidence as is available in each individual case as there is no statutory provision,—every case must depend upon its own evidence. 47 Cal. 633; 56 I. C. 586.

Where a certain sample of "commercial ghee" or buffalo ghee was found to contain some foreign fat substituted in part for genuine ghee:

Held, that the ghee was adulterated within the meaning of S. (2), sub-clause (2), of the Bengal Ghee Adulteration Act. 56 I. C. 586, 47 Cal. 633.

Food — Baking powder composed of ingredients some of which are injurious to health is not an article of "food" within the Sale of Food and Drugs Act, 1875, and a person selling the same cannot be convicted under S. 3. "Food" comprises articles of food or to be eaten as adjuncts thereto. *James v. Jones*, (1894) 1 Q. B. 304; 42 W. R. 400.

Unadulterated food — S. 150 (1) corresponds to S. 6 of the Sale of Food and Drugs Act, 1875. It has been *held* that S. 6 is not limited in its application to sales of adulterated articles, but that it applied also to cases in which the article sold was unadulterated but wholly different from that demanded by the purchaser. *Knight v. Bowers*, (1885) 14 Q. B. D. 845.

Tincture of opium. — Upon a complaint under S. 6 of the Food and Drugs Act, 1875, for selling tincture of opium which was not "of the nature, substance or quality" of the article demanded by the purchaser, it appeared that the drug which was sold as tincture of opium by the defendant was deficient in opium to the extent of one-third, and in alcohol to the extent of nearly one-half as compared with the standard prescribed by the British Pharmacopœia: *Held* that the defendant was liable to be convicted, although the purchaser had not specifically asked for tincture of opium prepared according to the recipe in the British Pharmacopœia. *White v. Bywater*, (1887) 19 Q. B. D. 532.

The term "food" does not include "drinks" and therefore in the absence of a special inclusion a person exposing for sale aerated waters unwholesome and unfit for human consumption does not commit any offence.

Where the words "or drink" are not used, the word food alone will not include drinks. *Cf.* 39 Mad. 362; 26 I. C. 311.

To the prejudice of the purchaser. — The cases on the subject collected in the following note illustrate two main propositions: (1) That a purchaser cannot be prejudiced when notice is given to him at the time of the sale that the article sold is not of the nature, substance, and quality of the article he demands; and that (2) in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that he has sustained actual prejudice or damage.

With regard to the first point, it is now well settled that where the seller of an article brings to the purchaser's knowledge the fact that the article sold is not of the nature,

substance, or quality of the article he demands, the sale is not to the prejudice of the purchaser within the meaning of this section. This was decided in *Sandys v. Small*, (1878) 3 Q. B. D. 449; where Cockburn, L. C. J., in giving judgment, said: "The provisions of the 6th section seem to me to apply to cases where a seller professes to sell to the purchaser an article as being of a certain denomination, whereas the article has been altered by an admixture of some other ingredient, and it seems that when the article is so altered this must be considered to have been done to the prejudice of the purchaser, unless it is duly and sufficiently brought to his knowledge; but if the alteration of the article is brought to the knowledge of the purchaser, and he chooses to purchase it notwithstanding, it can never have been intended that such a transaction should be interfered with."

See also *Williams v. Friend*, (1912) 2 K. B. 471. But it is not necessary to disclose what the mixture actually is. *ibid.* per Pickford, J.

In *Higgins v. Hall*, (1886) 51 J. P. 293, the appellant's wife, who was serving in his shop, when asked by a purchaser for a pound of coffee, said, "We don't keep it," but added, pointing to some tins labelled "Coffee and Chicory," that she sold that as a mixture. She then sold some of the mixture, which was found to contain only about 30 per cent. of coffee: *Held*, that the justices were wrong in convicting the appellant of selling coffee, for his wife had sold only a mixture, as she was entitled to do if she represented that it was a mixture. Moreover, the purchaser had asked for a mixture and had got it.

In *Pearks, Gunston and Tee, Limited v. Ward*, (1902) 2 K. B. 1, the King's Bench Division held that a sale may be to the prejudice of the purchaser within S. 6 of Act 1875 although the purchaser had special knowledge, not derived from information given by the seller, that the article was not of the nature, substance, and quality demanded by him; and that the test is whether the sale would have been to the prejudice of a purchaser who had not that special knowledge.

Of course the notice must be clear and unequivocal. In *Collett v. Walker*, (1895) 59 J. P. 600 a purchaser on entering a shop and asking for some cheese, was supplied with a mixture which was composed of skimmed milk and beef fat, the bulk of the butter fat which is contained in cheese made from "whole" milk having been abstracted. Attached to the bulk of the substance from which the purchaser's portion

was taken was a label containing the words "Valleyfield finest Oleine Cheese," the words "finest Oleine" being in smaller type than the others. No notice of admixture by a label on or with the article was given to the purchaser, so as to give the seller a defence under S. 8 (Food and Drugs Act, 1876). The purchaser did not notice the word "Oleine" on the label, and said that if he had he would have not known what it meant: *Held*, by Grantham and Lawrence, JJ., that the appellant was rightly convicted of an offence under S. 6. And in *Star Tea Co. v. Neale*, (1909) 73 J. P. 511; 8 L. G. R. 5, an inspector asked for coffee and was given a mixture containing 74 per cent. of chicory in a wrapper labelled "Coffee Mixture," with the words "sold as a mixture of coffee and chicory" in very small print. It was *held* that the defendant had been rightly convicted, and that the words "Coffee Mixture" would not necessarily lead a purchaser to suspect adulteration.

A false representation as to the nature, substance and quality of the article demanded made by the seller prior to the sale, does not constitute an offence under S. 6, provided that the true nature, etc., is disclosed at the time of sale. In *Kirk v. Coates*, (1885) 16 Q. B. D. 49, the question was whether a milkman was guilty of an offence under this section who stated to an officer that some cans contained new milk, but afterwards, on the officer intimating that he would have some, declared that it was old milk and not new. The magistrates decided that this was not a sale of new but of old milk, and that the defendant was therefore not liable under S. 6. The court upheld the decision of the magistrates.

With regard to the second point, *i. e.*, that in order to show that an article was sold to the prejudice of the purchaser it is not necessary to prove that the purchaser has suffered actual prejudice or damage, there is now no conflict of opinion. Even if the article was purchased for analysis and not for consumption, the section provides that the seller is liable if the article sold was adulterated. In *Hoyle v. Hitchman*, (1879) 4 Q. B. D. 233, Mellor, J., with regard to a private as well as an official purchaser observed: "If a purchaser, whoever he may be, gets an article inferior to that which he demands and pays for, it seems to me that he is necessarily prejudiced within the meaning of the section. The real offence is the fraudulent sale of an article adulterated so as to be of an inferior nature, etc., to that which is demanded and paid for. The necessity for the words, 'to the prejudice of the purchaser,' is this: but for these words, various absurdities might arise. The sale of an article of a superior nature or quality to that demanded would be an

offence." And Lush, J., said: "What is the meaning of 'prejudice'? It cannot be confined to pecuniary prejudice, or prejudice arising from the consumption of unwholesome food. The prejudice is that which the ordinary customer suffers, *viz.*, that which is suffered by anyone who pays for one thing and gets another of inferior quality. The words 'to the prejudice of the purchaser' are necessary, because if they had not been inserted, a person might have received a superior article to that which he demanded and paid for, and yet an offence would have been committed." The result is, that it is never necessary to prove any actual damage to the purchaser in order to obtain a conviction under this section, and that the words "prejudice of the purchaser" are only inserted, as Mellor, J., points out, to prevent such an absurdity as a prosecution for selling a better article than the one demanded.

Further, it was decided in *Pearks, Guntson and Tee, Limited, v. Ward, supra* that it is enough to show that any ordinary purchaser would be prejudiced, even though the person who actually bought the sample, owing to some special circumstance, has not been prejudiced at all.

Nature, substance or quality.—This differs from English Food and Drugs Act where the word "and" is used instead of "or."

Tea dust came within the purview of the words "articles of food or drink." The word "food" includes any article which ordinarily enters into or is used in the composition of preparation of food, and includes flavouring matter and condiments. 47 Cal. 53; 52 I. C. 223.

The article demanded.—It is the article known commercially under that name. In *Sandys v. Rhodes* (1903) 61 J. P. 352, a grocer was prosecuted for selling a variety of tapioca as sago. The justices found that the public and the trade generally knew this substance as sago and that there was no appreciable difference in cost between the two. The High Court held that no offence has been committed.

If the article demanded has some recognised standard of quality or composition, it is an offence against the section to sell an article which does not come up to that standard, and if there is no statutory standard, the justices must fix one for themselves upon the evidence, *Roberts v. Leeming*, (1905) 61 J. P. 417, and *Wilson and McPhee v. Wilson*, (1903) 68 J. P. 175.

On the other hand, if the article demanded has no recognised standard of quality or composition, *e. g.*, cream, no offence is committed by selling an article of low quality

but genuine. In the case of *Hoyle v. Hitchman*, (1879) 4 Q. B. D. 233, Lush, J., referred to *Davidson v. McLeod*, (1887) 42 J. P. 43 and while dissenting from the views of some of the judges expressed therein, said: "The decision itself seems to be correct. The article there demanded and supplied was cream. It was admitted that it contained no foreign admixture or adulteration, but it was cream of an inferior quality to that ordinarily sold in Glasgow. Cream is not an article having any standard of quality. It varies with the character of the cows from which the milk comes and the food on which they are fed. This was genuine cream though of inferior quality. It appears to me that the sale in such a case was not an offence within the Act at all. In the present case the article demanded was milk; that supplied was milk and water. It was an adulterated article."

"An accidental introduction of a small quantity of deleterious matter into an article sold for food does not of necessity make it different in nature, substance and quality from the article demanded (per Lord Alverstone, C. J., in *Goulden v. Rook* and *Bent v. Ormerod*, [1901] 2 K. B. 290).

It should be noted that if an article sold is altogether different from that which was demanded by the purchaser it is an offence under this section. See *Knight v. Bowers* (1835) 14 Q. B. D. 845, where saffron was asked for and saffin supplied. If this were not so, many offenders would escape; as, for instance, those who sell lard for butter, or chicory for coffee.

The question whether the article sold is the article demanded by the purchaser is one of fact for the justices. *Webb v. Knight*, (1877) 2 Q. B. D. 530.

Milk.—It has been generally recognised by analysis that genuine milk contains at least 3 per cent. of milk fat and at least 8·4 per cent. of other solids and this standard has to some extent been definitely accepted in regulations made under Food and Drugs Act. The regulations do not absolutely fix the standard of genuineness but merely shift the onus from the prosecution to the accused in cases to which they apply. The onus can only be discharged by definite evidence that nothing has been added to or subtracted from it. *Kings v. Merries*, (1920) 3 K. B. 566.

Unavoidably mixed.—The Act implies reasonable care. Where the foreign ingredient is present in larger proportion than is ordinarily found in a commercial article, the practice is to regard the excessive quantity present as an adulteration; for instance, in the case of pepper, where sand is in excess.

In *Shortt v. Robinson*, (1899) 80 L. T. 261, it was *held* that owing to the method in which caper tea is produced the presence of 3·5 per cent. of mineral matter in the tea did not constitute an adulteration, and that the seller was protected by this sub-section.

In *Warnock v. Johnstone*, (1881) 8 Rettie (J. C.) 55, the defendant was prosecuted for selling butter-milk adulterated with 30 per cent. of added water. It was proved that the addition of some water was necessary in the process of manufacture, but that the quantity varied, and depended for the most part upon the state of the temperature. The High Court of Justiciary in Scotland *held* that the defendant was excused under sub s. (4) of S 6 of Act 1875 corresponding to sub-clause (b) of S. 150 (1).

Chemical Examiner's report.— A report of the Chemical Examiner made prior to the institution of proceedings under S. 150 is not admissible in evidence without examination of the Chemical Examiner himself. 50 I. C. 26.

Soliciting
alms

151. (1) Whoever, in any street or public place within the municipality, begs importunately for alms, or exposes, or exhibits, with the object of exciting charity, any deformity, or disease, or any offensive sore or wound, shall be punishable with imprisonment of either description, which may extend to three months, or with a fine not exceeding fifty rupees, or with both, provided that—

- (a) in the case of a first offence, the court may, if it thinks fit, instead of sentencing the convict to any punishment, release him after due admonition;
- (b) in any case, the court may, if it is satisfied of the inability of the convict to earn a livelihood, owing to physical infirmity or debility, and if the person in charge of any poor house in the municipality certifies that he is willing to receive him, direct that the convict be received into such poor house, after being released on entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period, not exceeding three years as the court may direct.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under this section shall be cognizable ; and notwithstanding anything contained in this Act, a Court may take cognizance of such an offence in the manner provided by Section 180 of the Code of Criminal Procedure, 1898.

Notes.

There was no provision against begging in the old Act. S. 151 introduced in 1911 has been repealed and the present section has been substituted by S. 51 of the Punjab Amendment Act, III of 1933.

In spite of the provision introduced in 1911 importunate begging is still common in big municipalities and the sight of the beggars exposing self-inflicted offensive sores or wounds is not uncommon. Sometimes public places are infested with such beggars. Municipalities were reluctant to enforce the provision of the section against this nuisance.

Analogous Law:

S. 206, Central Provinces Municipal Act, II of 1922.

S. 248, United Provinces Municipalities Act, 1916.

Recent changes. The changes effected increase the punishment and as offenders are professedly penniless, punishment by imprisonment has been provided. Under the present section no complaint by person authorized under S. 228 is necessary. The offence has been made a cognizable offence and any body can complain of the offence. The police can now initiate proceedings. There is still a good deal of sentiment in favour of such begging. It is to be feared committees will not take action under this section to avoid incurring odium. The burden is thrown now on the police or on such persons who will not be deterred by any such false sentiment.

152. (1) The Committee may, by public notice prohibit in any specified part of the Municipality:—

- (a) the keeping of a brothel ;
- (b) the residence of any person who practises prostitution.

Power
over
orderly
houses and
prostitutes.

(2) Whoever after the date specified in the public notice issued under sub-section (1) —

- (a) keeps or manages or acts or assists in the management of a brothel within the prohibited area, or
- (b) being the tenant, lessee or occupier of any premises knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution within the prohibited area, or
- (c) being the lessor or landlord, of any premises, or the agent to such lessor or landlord, lets the same or any part thereof, within the prohibited area with the knowledge that such premises or some

part thereof, are, or is used as a brothel, or for the purposes of habitual prostitution, or is wilfully a party to the continued use of such premises as a brothel or for the purposes of habitual prostitution, or

(d) being a practising prostitute resides within the prohibited area,

shall be punishable with imprisonment of either description, for a term which may extend to one month, or with fine which may extend to one hundred rupees or with both, and in the case of a continuing offence with an additional fine not exceeding ten rupees for every day after the first during which the offence continues.

Notes.

The corresponding section was newly introduced in Act III of 1911 and was copied from S. 174 of Cantonment Code.

Recent changes.—The present section has been substituted by S. 52 of the Punjab Amendment Act, III of 1933, and effects the following changes:—

1. The notice prohibiting the keeping of brothel or residence of prostitutes requires to be public thus doing away with the difficulty of serving individual notices.

2. For the words “public prostitute” the words “person practising prostitution have been used.”

3. Scope of the section has been widened. Clauses (a), (b) and (c) render liable persons other than the prostitute or brothel-keeper.

4. Punishment has been increased.

Analogous Law:—

S. 298-H e, U. P. Act, II of 1922. S. 142 Central Provinces Act, 1916. S. 181-A, Burma Act, III of 1898.

Notice.—An area can only be prohibited by a public notice—this has been now provided in the section as amended. No notice on individual liable under the provision is now necessary before prosecution provided the public notice has been issued. The decision reported in 11 Lah. 235 is no longer applicable.

Prostitution.—The idea underlying prostitution is that a woman should surrender her body for a monetary consideration to some one who is not in law entitled to have sexual intercourse with her. The position of a mistress is not necessarily that of a prostitute. The relationship is of a more permanent nature than the casual relationship implied in prostitution. Having a stray paramour would not consti-

tute a woman a prostitute. The matter whether a woman is an ordinary or a common prostitute rests more on degree than on kind. 1929 Bom. 266, 117 I. C. 336.

Prostitution.—Acts of improper sexual intercourse are acts of prostitution in the strict sense of the term. The ordinary and commonly understood meaning of the word "prostitution" is the offering of the person for promiscuous sexual intercourse with men. Prostitute is the woman who offers her person for the above purpose. Isolated acts of sexual intercourse do not constitute prostitution nor does habitual intercourse amount to it, which must be both habitual as well as promiscuous. Of course the fact that prostitutes exercise a due reserve against a certain class of persons does not make their intercourse any the less promiscuous, for promiscuousness does not necessarily imply all comers but may be confined to all comers falling in a specified class. Habit and promiscuousness are the two characteristics of prostitution. In this sense there is no difference between a prostitute or a public prostitute. Cf. 5 M. H. C. 473, 1 Weir 377.

Prostitute and public prostitute.—Neither the term "prostitute" nor "public prostitute" has been defined in the Act. Though it may be said of a woman who earns her living mostly by selling her body and is a kept woman that she is a prostitute in the popular sense of the expression, the term "public prostitute" cannot be applied to her. Before a "prostitute" can be described as a "public prostitute" it must be shown that she is available at any time to the public at large. Cf. 1930 Lah. 824; 123 I. C. 536; 31 P. L. R. 547.

Habitual or practising prostitute.—A woman who is a prostitute by profession and whose trade is to lend out her body on hire to visitors of a specified class is a habitual prostitute or practising prostitute. But where she is the employee of one man and has been living with different lovers on different occasions but with one man at a time she is not a public or habitual prostitute. 1926 Lah. 461, 93 I. C. 827.

A public or practising prostitute is a woman who usually and generally offers her person for sexual intercourse for hire and who openly advertises and acknowledges her occupation by word of mouth, deportment and conduct.

The common type of a public or practising prostitute is a woman who exhibits herself on the balcony or other prominent part of her house to attract people. 1932 All. 264.

Casual acts of prostitution will not constitute habitual prostitution nor will a woman living with one man at a time become a practising prostitute or a habitual prostitute. The idea underlying the provision is to prohibit prostitutes openly carrying on their profession and habitually practising prostitution. Women who have apparent means of livelihood but also carry on prostitution but not openly or habitually are not touched by the Act.

Note.—The decisions noted above relate to public prostitutes. In the amended section the term “public prostitute” is not used, instead a person practising prostitution is used.

Having regard to the ordinary meaning of the term prostitute, the use of the words practising prostitute for public prostitute does not effect any change in law. The use of the term public was liable to be misunderstood and every practising prostitute contended that she was not a public prostitute. The section, however, will not affect mere dancing girls though it is generally known that dancing and singing are subsidiary accomplishments to simple harlotry.

Jurisdiction of civil courts.—It is a well recognized rule of law that when it is alleged that the action of the municipal committee is *ultra vires* or is not covered by the authority of the Act the civil courts have power to interfere. It is only when the action of the municipality has been exercised in conformity with the powers conferred upon it by the Municipal Act that the jurisdiction of the civil courts is ousted. Their discretion as to the mode of action is not subject to a scrutiny by the civil courts but their power to take that action is always open to examination by such courts. It is essential that the person to whom a notice under S. 152 is given should be carrying on her profession of a public prostitute at the time of the issuing of the notice. 1926 Lah. 461, 93 I. C. 827.

Jurisdiction of civil courts to restrain the committee from issuing notices alleging certain persons to be public prostitutes.—The civil courts have jurisdiction to decide in a suit by an alleged public prostitute against municipal committee for their having issued notice under S. 152 of the Municipal Act the question whether or not the plaintiffs are public prostitutes, and, on a finding of this issue in their favour, to issue an injunction restraining the municipal committee from enforcing their notice prohibiting them from residing within the specified limits of the municipality.

There is no express provision of the law which bars the jurisdiction of the civil courts in such a case and it is for the municipality to show that such jurisdiction is barred by implication.

It is only when the municipal committee acts *bona fide*, reasonably and in conformity with and strictly within the powers conferred by the law that it can escape the exercise of the restraining powers of the civil courts. That if its requisition goes beyond the powers conferred upon it, then civil courts have jurisdiction to restrain it from enforcing them. The courts have no jurisdiction to interfere with the mode in which the powers of municipal bodies are exercised but they are competent to restrain such bodies if they act *ultra vires* and as the municipal committee issued a notice under S. 152 of the Municipal Act against persons who are proved not to be public prostitutes the committee acted beyond the powers conferred upon it by the legislature and its action in issuing the notice was *ultra vires* and hence civil courts could interfere. In such a case the burden of proof that the plaintiffs are not public prostitutes will be on the plaintiffs. 1927 Lah. 358; 100 I. C. 1010. See to the same effect 1930 Lah. 824.

When a municipal committee acting under S. 152 issued a notice to certain women prohibiting their residence in certain localities on the ground that they were public prostitutes in a suit for injunction asserting that they were not public prostitutes:

Held, that the civil courts had jurisdiction to try the suits as it was asserted by the plaintiffs that the action of the committee was *ultra vires*. The committee was not the sole judge of whether a person was or was not a prostitute and its conclusion could be challenged in a civil court. 1930 Lah. 824; 123 I. C. 536.

Specified part.—It is doubtful if the committee can by successive resolutions prohibit the whole of the municipal area for the residence of the prostitutes and brothel keepers. The power is no doubt continuing but some portion of the area should remain excluded from the prohibition. See, however, 18 I. C. 651; and 4 Pat. 311; 1925 Pat. 540.

In the Punjab the section requires a prohibition in any specified part of a municipality and hence prohibiting the entire municipal area will be *ultra vires*.

Under a similar provision of the U. P. Municipal Act the committees are empowered under S. 298-H. (c) to prohibit by bye-law in any specified street or area, the residence of a public prostitute. In a case relating to Agra Municipality it was *held* that the municipality itself was a specified area: 1932 All. 537. The wording of the Punjab Municipal Act, however, are different and the whole of municipal area cannot be prohibited.

Notice prohibiting residence should be absolute.—In the following cases the bye-laws prohibiting the residence of certain public prostitutes in specified areas and making exceptions in case of others were held to be *ultra vires*:—

The Agra Municipal Committee, under S. 298-H (e) of the Act, made a bye-law in 1917 to the following effect: "No public prostitute shall reside in any house or building or ply her trade within the municipal limits except on both sides of the streets.——*Exception*—Prostitutes owning houses in places other than those mentioned above may continue to reside in such houses, but future acquisitions of property shall not entitle them to live and carry on their profession there":

Held, that the municipality was itself an area, the limits of which were specified, well-known and defined. The bye-law undoubtedly prohibited public prostitutes from residing "within the municipal limits" except certain streets. The bye-law specified the rest of the area "within the municipal limits" other than the excepted streets, as the area in which public prostitutes should not reside. But it was quite clear that reading the whole bye-law together with the exception in it, there was no absolute prohibition against prostitutes residing within the area other than the streets excepted. One class of prostitutes, namely, those who owned houses, were still allowed to carry on their trade within such area. This involved an invidious distinction between the two classes of prostitutes. There should be no discrimination of this kind; the prohibition must be general and of universal application within the specified area, and must not make an exception in favour of any particular group or class of prostitutes. Therefore the bye-law, in as much as it failed to lay down an absolute prohibition within the specified area was *ultra vires* and illegal. 1932 All. 537; 137 I. C. 20).

A bye law prohibiting public prostitutes from residing in a particular street or area may be for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipality, and therefore such a bye law can be validly made. But the prohibition must be general and of universal application within a specified street or area, and must not hit particular prostitutes while leaving other prostitutes free to ply their trade.

Where the bye-law reads: "No public prostitutes shall reside within the areas or in the streets specified below, provided that public prostitutes who, at the end of March 1925, owned and resided in houses and streets in areas mentioned below may continue to reside in those houses," such a

bye-law is not in accordance with the provisions of S. 298* because it does not amount to a prohibition of the residence of prostitutes but merely to a prohibition against a particular class of prostitutes and is therefore illegal. 1932 All. 70, 136 I. C. 787.

Specified Area. - excluding whole area except a portion is not in compliance with section.

The interpretation which must be placed on S. 298-H (e) is the one which is not only the more reasonable one, but also the one that encroaches less on individual citizens, viz., that the Board has power to make a bye-law prohibiting prostitutes from residing in a specified area, but not to make a bye-law prohibiting them from residing in the whole of the municipality with the exception of a certain specified part. 54 All. 1, 1932 All. 110, 137 I. C. 80.

Order prohibiting the residence of public prostitutes. - The bye-laws framed by a municipal board providing that "no public prostitute shall reside within the areas or the streets specified below" is not *ultra vires* and is in keeping with the object and intention of the statute. For the bye-law to be applicable, a woman should be not only a prostitute but a public prostitute. A great degree of moral degradation alone will attract the application of a drastic law which involves the consequence of a woman being compelled to leave her house in which she might have invested her fortune or might have other associations. A woman cannot be said to be a public prostitute simply because she belonged to the caste of prostitutes or that her mother and that mother's sisters were public prostitutes. 1932 All 264, 139 I. C. 804.

Suits for injunctions. - Before the section was amended, it was necessary to issue individual notices to a prostitute calling upon her to vacate a particular place as being a public prostitute. The present section by providing a public notice dispenses with the necessity of any individual notice. When in future a prostitute will be prosecuted under this section as being a practising prostitute or carrying on habitual prostitution no suit for injunction should lie and the prostitute can defend herself by proving that she is not a practising prostitute or addicted to habitual prostitution. The mere fact that a public notice under S. 152 has been issued will not prove that a particular woman is a practising or habitual prostitute.

* Cf. S. 152.

The committee will have to prove that the woman prosecuted comes within the purview of the provisions of S. 152. (*See* 7 Bom. L. R. 161.) A civil suit will not lie to restrain criminal proceedings especially as the accused has sufficient remedy. Criminal courts are as much entitled to hold whether a particular woman is a habitual or practising prostitute as a civil court. *See* in this connection 55 Cal. 978.

Brothel.— *See* Notes under S. 153.

Brothels.

153. On the complaint of the committee or of three or more inhabitants of a municipality that a house within the limits of the municipality is used as a brothel, or by disorderly persons of any description, to the annoyance of the respectable inhabitants of the vicinity or that any such house is used as a brothel in the neighbourhood of a cantonment or of an educational institution or boarding house, or of any place of worship, any magistrate of the 1st class having as such jurisdiction in the place where the house is situated, may summon the owner or tenant of the house, and on being satisfied that the house is so used, and that it is a source of annoyance or offence to the neighbours, or that it is in the neighbourhood of a cantonment or of an educational institution or boarding-house, or of any place of worship, may order the owner or tenant to discontinue such use of it; and if he shall fail to comply with such order within five days, may impose upon him a fine not exceeding twenty-five rupees for every day thereafter that the house shall be so used.

Notes.

S. 204 of the old Act with important changes, which largely extend the scope of the section.

Sanction of the local Government is not now necessary for enforcing the provisions of the section.

Analogous Law:—

S. 181, Burma Act, III of 1898.
S. 153, Bombay Act, III of 1901.
Ss. 143 & 197, Central Provinces
S. 189, Bombay Municipal Act, II of 1922
Boroughs Act, 1925.
S. 247, U. P. Act, II of 1916.

Compensation under Section 250, Cr. P. C.—A complaint under this section is not a complaint of an offence as defined in S. 4 (o) of the Cr. P. C. and so the magistrate hearing the complaint has no jurisdiction to order the complainant to pay compensation under S. 250, Cr. P. C. *Cf.* 29 I. C. 1008.

Summary trial.—An application under S. 153 is not a complaint of an offence. The offence comes into existence if the owner or tenant fails to comply with an order to

discontinue the use of the house as a brothel or disorderly house. The application therefore cannot be tried summarily. 45 I. C. 113.

Where a magistrate received a complaint under S. 153, he cannot on that application pass an order prohibiting the use of the particular house without taking evidence and satisfying himself that the house is used as a brothel or used by disorderly persons to the annoyance of the persons living in the neighbourhood. 55 I. C. 850.

Nature of an order to be passed under Section 153.—An order passed on an owner of an hotel which was being used as a brothel to vacate the premises is bad. The proper order in such a case is to ask the owner to discontinue the using of the hotel as a brothel. 9 Lah. 394; 1928 Lah. 278.

An order sentencing accused to pay a fine, if the house is not vacated by a certain date, is bad as contravening the provisions of S. 153. 32 I. C. 334.

Complaint.—A petition presented to the district magistrate and acted upon by him is a complaint within the meaning of this section, though it may not have been addressed to him. The discretion of a magistrate for the time being in charge of a district, which he is entitled to exercise under this section is not necessarily fettered by the manner in which his predecessors have in the past exercised that discretion. P. L. R. 28 of 1910; 8 I. C. 223.

Brothel.—A brothel is a place resorted to by persons of both sexes for the purpose of prostitution, who are strangers to the occupancy.

If a woman plies the trade of a prostitute in her own house that does not make the house a brothel. 19 I. C. 714; 45 I. C. 113; 1925 Lah. 146.

Ingredients of the section.—(1) The character of the house, *i. e.*, the use of the house as a brothel or its use as a resort of disorderly persons of any description;

(2) The nuisance, *i. e.*, the annoyance of the respectable inhabitants of the vicinity; or

(3) The proximity of brothel to any educational institution, boarding-house or place of worship.

Nuisance or no nuisance is not an element in the definition of a brothel. 19 I. C. 714.

House used by disorderly persons.—The section is not confined to the use of the house as a brothel. Where the evidence showed that musical parties were given, gramophone was played and singing went on in the house to the

annoyance of the neighbours, the order was rightly held to have been passed under the section. 32 I. C. 334.

If a prostitute lives with a man *enfamille*, she does not necessarily come within the category of disorderly persons. 1929 Pat. 406; 115 I. C. 690.

Scavenging and House-scavenging.

Removal
deposit
offensive
matters.

154. The committee may fix places within or, with the approval of the District Magistrate, beyond the limits of the municipality for the deposit of refuse, rubbish or offensive matter of any kind or for the disposal of the dead bodies of animals, and may by public notice give directions as to the time, manner and conditions at, in and under which such refuse, rubbish or offensive matter or dead bodies of animals may be removed along any street and deposited at such places.

Notes.

S. 97 of the old Act.

Analogous Law.—

S. 187, Bengal District Municipal Act, 1884.

Ss. 248 & 251, Bengal Municipal Act, XV of 1932.

Ss. 207-9, Behar and Orissa Municipal Act, 1922.

Ss. 160 & 161, Bombay Municipal Boroughs Act, 1925.

S. 130, Bombay District Municipal Act, III of 1901.

Ss. 367-8, 385 & 441(a), Bombay City Municipal Act, III of 1888.

Ss. 111 & 125, Burma Municipal Act, III of 1898.

Ss. 372 & 373, Calcutta City Municipal Act, III of 1923.

S. 132, Cantonment Act, II of 1924.

S. 118, Central Provinces Municipal Act, II of 1922.

Ss. 194, 196 & 200, Madras City Municipal Act, 1919.

Ss. 157 & 160, Madras District Municipal Act, V of 1920.

S. 273, U. P. Municipalities Act, 1916.

English Law.—

S. 50, Public Health Act, 1875.

Disobedience of the notice is punishable under S. 219.

Executive Officers Act.—The duty imposed upon the committees under this section shall not be performed by committees but may be performed by the executive officers in municipalities to which the Executive Officers Act has been extended.

Disposal of refuse.—If it is essential to the health and comfort of a populous community that there should be an efficient system for disposing of noxious liquid matters before they become a source of danger to health by means of sewers and drains, it is almost equally important that proper arrangements should be made for getting rid of solid refuse. It cannot be sent into drains and sewers, but must be removed and

disposed of by some other means so as not to cause a nuisance. All Municipal Acts in force in British India contain provisions for this purpose. Refuse may be roughly divided into two classes—public and private. Public refuse consists of street and road sweepings and is generally dealt with by the municipal authorities themselves who are responsible for the upkeep of streets and public places. Private refuse is the product of a private house and if the same is allowed to be accumulated in any private house, it is likely to cause a nuisance. The duty of dealing with private refuse is imposed both on the individuals who cause it to be produced, and on the authorities charged with the public health. Municipal corporations must provide or appoint in proper and convenient situations, public receptacles, depots and places for the temporary deposit or final disposal of dust, ashes, refuse and rubbish and other offensive matter. It can also call upon occupiers of houses to deal with all rubbish and offensive matter accumulating in the premises in the various modes prescribed by statute. Ss. 154-156 deal with private solid refuse of all kinds. Under S. 154 the committee may fix within or without the limits of the municipality places for deposit of such refuse. S. 155 deals with failure to remove such offensive matters while S. 156 prevents people from depositing such matters in places not fixed for the purpose.

Dead animals.—See S. 168. The carcass of a dead animal from whatever cause the death may have ensued has some value to the property owner and of this property he cannot be deprived without compensation. Hence, under statutory authority (Ss. 154 and 168) while a committee may require the removal of a dead animal beyond the city limits within a reasonable time and to a specified reasonable distance, and in default thereof may deal with the carcass as a nuisance and take it and make such disposition as may be necessary for public health, these regulations appear to mark the limit of municipal authority. An owner cannot therefore be deprived of his property in dead animals. *Cf.* Dillon, p. 1029.

Under S. 56 (*d*) dead animals and other refuse deposited in places fixed under this section become the property of municipal committee.

Misappropriation of refuse collected.—During a strike the sanitary inspector induced the sweepers to deposit filth at a place not fixed by the committee under S. 154 and sold the filth and pocketed the proceeds. He was held guilty under S. 409, I. P. C. *Cf.* 1923 All. 480; 45 All. 281.

failure to
have offen-
sive matter.

155. Whoever, being the owner or occupier of any building or land, keeps or knowingly or negligently allows to be kept for more than twenty-four hours, or otherwise than in some proper receptacle or pit, any dirt, dung, bones, ashes, nightsoil or filth or any noxious or offensive matter in or upon such building or land, or suffers any such receptacle or pit to be in a filthy or noxious state, or neglects to employ proper means to cleanse and purify the same shall be punishable with fine which may extend to fifty rupees.

Notes.

S. 154 of the old Act.

Analogous Law:—

S. 217, Bengal District Municipal Act, 1884.

S. 253, Bengal Municipal Act, XV of 1932.

S. 211, Behar and Orissa Municipal Act, 1922.

S. 162, Bombay Municipal Boroughs Act, 1925.

S. 129, Bombay District Municipal Act, III of 1901.

S. 372, Bombay City Municipal Act, III of 1888.

S. 115, Burma Municipal Act, III of 1898.

S. 187, Central Provinces Municipal Act, II of 1922.

S. 202, Madras City Municipal Act, 1919.

S. 158 (2), Madras District Municipal Act, V of 1920.

S. 272, U. P. Municipalities Act, 1916.

English Law:—

Ss. 40 and 50, Public Health Act, 1875.

Delegation.—Powers under this section can be delegated under S. 33 (b) to Medical Officer of Health.

Occupier or owner.—When the owner is not himself in possession it is the occupier who is liable under this section. 8 W. R. Cr. 65; 16 W. R. Cr. 70.

Allows to be kept.—The occupier is liable whether the premises are made dirty by himself or by another person because he is bound to keep them clean. 3 W. R. 33.

A person cannot be said to have allowed a thing to be done which it is not in his power to prevent and consequently where land is let to a tenant and such tenant allows offensive matter to accumulate on the land, it is illegal to convict the landlord for the same. Cf. 1931 Cal. 337 (1).

Liability of the owner.—The owner while in possession of the premises is punishable if they are made filthy by nuisances committed by other persons; but if he has sublet them the actual occupiers are liable. 3 W. R. 57.

Owners of vacant lands.—It is the duty, at common law, of the owner of vacant land to prevent his land from being a public nuisance, although such a nuisance may be caused by the acts of other persons; and the Attorney-General, on behalf of the public, is entitled to an injunction to prevent such owner from committing a breach of that duty. The

fact that a sanitary authority under the Public Health (London) Act, 1891, have power, or a duty to themselves to abate a nuisance, or to take proceedings to procure its abatement, does not prevent them from obtaining, in an action brought by them as relators with the Attorney-General, an injunction to prevent the continuance of the nuisance (*Attorney General v. Tod Heatley*, [1897] 1 Ch. 560); *Folld. in Clayton v. Sale U. D. C.*, (1926) 1 K. B. 415. The owner of vacant land may not, however, be liable to an adjoining owner for a nuisance which is caused without his knowledge or consent by the action of a third party who has so acted with the knowledge and by the aid of the adjoining owner (*Job Edwards, Ltd., v. Birmingham Canal Navigation, Ltd.*, [1924] 1 K. B. 341; 130 L. T. R. 522). Nor is an owner of land liable for damage done to an adjoining landowner owing to natural agencies such as a fall of rocks due to weathering (*Pontardawe R. D. C. v. Moore Gwyn*, [1929] 1 Ch. 656). Lumley's "Public Health Act," 10th Edition, pp. 125-6.

Cost of cleansing.—A landlord is not entitled either under S. 69 or S. 70 of the Contract Act to recover from his tenant the costs of sweepers and *bhistis* employed under an order from the municipal board to keep the premises clean. 26 I. C. 77, 12 A. L. J. 931.

156. Whoever, without the permission of the committee or in disregard of its orders, throws or deposits, or permits his servants or members of his household under his control to throw or deposit earth or materials of any description, or refuse, rubbish or offensive matter of any kind upon any street or public place or into any irrigation channel or public sewer or public drain or into any drain communicating with an irrigation channel or a public sewer or public drain, shall be punishable with fine which may extend to twenty rupees.

Depositing
or throwing
earth or ma-
terials or re-
fuse, rubbish
or offensive
matter on
roads or into
drains

Notes.

This section was amended by Act II of 1923. The present amendment introduced by S. 63 of Punjab Act, III of 1933, restores the section as it existed before 1923 with certain modifications.

The section deals with refuse in a solid form, while S. 129 deals with liquid form of refuse.

Analogous Law:—

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|--|--|
| S. 216, Bengal District Municipal Act, 1884. | S. 118 (c), Cantonment Act, II of 1924. |
| Ss. 209 (2) & 212, Behar and Orissa Municipal Act, 1922. | S. 207, Central Provinces Municipal Act, II of 1922. |
| S. 158 (1), Bombay Municipal Boroughs Act, 1925. | S. 202 (4), Madras City Municipal Act, 1919. |
| S. 127, Bombay District Municipal Act, III of 1901. | Ss. 157 & 161, Madras District Municipal Act, V of 1920. |

S. 373, Bombay City Municipal Act, III of 1888.

S. 128, Burma Municipal Act, III of 1898.

S. 375, Calcutta City Municipal

Act, III of 1923.

S. 274, U. P. Municipalities Act, 1916.

English Law:—

S. 47, Public Health Act, 1890.

Executive Officers Act.—The power conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Dust-bin is not a part of the street.—Under S. 307 of the City of Madras Municipal Act, dust-bins were provided by the municipality for the deposit of dust, dirt, ashes, etc., excepting stable refuse. Second clause of the section made it punishable for any one to deposit dust, dirt, etc., and stable refuses in any street. A person was convicted for depositing stable refuse in a dust-bin. On revision it was held that the dust-bin is not a part of the street and that the throwing of the stable refuse in the dust-bin was not a deposit of such refuse in the street so as to constitute an offence. 23 Mad. 164.

Cattle.—A person cannot be convicted of this offence for having tied his cattle near the drain so as to allow their dung etc., to drop there. (1888) Rat. Un. Cr. C. 412.

Occupier.—See Notes under S. 3 (10).

A person who is held responsible for the upkeep and cleanliness of a temple and all work connected with it is not the "occupier" of it when he was not residing in the temple: 39 All. 309; 38 I. C. 308. An occupier of land within a municipality who lets offensive matter to flow on the street is guilty under the section: 38 I. C. 768. S. 34 of the Police Act, 1861, also covers the mischief aimed at in the section and if an offender is prosecuted under police Act for allowing offensive matter to be placed on the street the conviction cannot be quashed on the ground because the act complained of also constitutes a breach of S. 156. Cf. 52 I. C. 495.

A person cannot be convicted under this section for keeping a manure heap in a town but not in the street. 9 Mad. 167.

Deposit of takht-posh.—Deposit of *takht-posh* or movable wooden platform is no offence under S. 156 corresponding to S. 118 (c) of Cantonment Act. 1927 Lah. 647, 103 I. C. 411.

Public place.—A verandah of private house accessible to street is not a public place. 1931 Lah. 576.

Nuisances
by children
and others.

157. Whoever permits any person under his control to whom the provisions of Sections 82, 83 and 84 of the Indian Penal Code are applicable to commit a nuisance upon any street or into any public sewer or drain or any drain communicating therewith, shall be punishable with fine which may extend to twenty rupees.

Notes.

This is a new section.

See report of the Select Committee. S. 118 (2) of Cantonment Act, II of 1924.

Analogous Law.—S. 158 (2) of Bombay Municipal Boroughs Act, 1925.

Delegation.—Powers under this section can be delegated *vide* S. 33 (b).

Nuisance at any other place.—The commission of the nuisance anywhere else than in the places specified is not an offence under this section. 1890 Rat. Un. Cr. C. 507.

The evil habit still persists and unless vigorous action is taken by the committees to enforce the provisions of the section it is impossible to expect any improvement.

158. The removal of filth, rubbish, ordure or other offensive matter from a privy, latrine, urinal, cesspool or other common receptacle for such matter in or pertaining to a house or building is called house-scavenging.

Definition
of house
scavenging.

Notes.

S. 111 of the old Act.

Analogous Law:—

S. 131 (3), Cantonment Act, II of 1924.

S. 320, Bengal Act, III of 1884.

English Law:—

S. 195, U. P. Act, II of 1916.

S. 42, Public Health Act, 1875.

Trade refuse.—Where the committee has undertaken house-scavenging it cannot be compelled to remove trade refuse for the removal of which the occupiers should make their own arrangements, or may enter into contract with the committee for its disposal. To draw a clear distinction between the house and trade refuse has proved no easy matter. To determine the difference, regard is to be had to the nature of the refuse rather than to its origin or the manner in which it is produced. *Mayor of Westminster v. Gordon Hotels, Ltd.*, (1906) 2 K. B. 39. The question arose, in that case as to whether such things as ashes from grates, sawdust, empty bottles and tins, straw, packing-cases, tea-leaves, waste-paper, egg-shells, lemon-peel, and dust, from the rooms

and staircases, were house refuse within the Public Health (London) Act, 1891, S. 30, or whether, having regard to the fact that the refuse in question came from an hotel which was a business, such refuse become trade refuse. The borough council were summoned for failing to remove the refuse on notice and were convicted and fined, the learned magistrate stating a case. The statute in question contained a definition of house and trade refuse. The former was stated to mean ashes, cinders, breeze rubbish, nightsoil, and filth, but not to include trade refuse; the expression "trade refuse" to mean refuse of every trade, manufacture or business or of any building materials. The High Court confirmed the opinion of the magistrate. Lord Alverstone, C. J., said: "The more correct view to take is, in my opinion, that when the refuse is of the same kind as ordinary house refuse we ought not to draw such a distinction as to put upon the householder or person producing the refuse the burden of separating it unless it ought clearly to be regarded as trade refuse." Darling, J., : "In my opinion the legislature did not intend to give anything like an exhaustive definition of trade refuse, and I think it is sufficient to say that trade refuse must be refuse which is produced in the doing of something different from the occupation of a house as a house is ordinarily occupied, and that house refuse is not converted into trade refuse by the mere fact that the people who occupy the house and buy the food and the coal for the fires for the purpose of carrying on the house are running the house as an hotel."

The case of *J. Lyons & Co., Ltd., v. Mayor, etc., of London*, (1909) 2 K. B. 588, followed that of the Gordon Hotel case in dealing with the question as applied to a restaurant pure and simple, without the additional complication of sleeping accommodation as in the case of an hotel. There is a very illuminative passage in the judgment of Mr. Justice Jelf: "Now there are cases which clearly fall on one side of the line and many which clearly fall on the other. For example, in a carpenter's shop the sawdust and shaving are clearly trade refuse; the snippings from a tailor's business would clearly be trade refuse; and so would be the hair cut by hairdresser from the heads of his customers. On the other hand there are certain incidents common to all houses, whether used for trade purposes or not, which would clearly not be trade refuse, dust blown in by the wind, soot from chimneys and dirt brought in on the boots of persons entering the house. These fall clearly on the other side of the line. The description of the refuse in this case includes many things which are merely house refuse and other things which might be considered trade refuse. The question is what was

substantially the character of this refuse; and it seems to me that having regard to its character as distinct from the place in which it was produced, it is not trade refuse but is house refuse."

Receptacle.—The refuse, etc., must be collected in the receptacles by the householder. The committee will be bound to remove the refuse, etc., from privies, urinals, cess-pools or receptacles. Committee is not expected to collect the refuse or offensive matters if not found in the places named.

Rubbish and totting.—The householders do not confine themselves to collecting rubbish properly so-called but throw sometimes other useless articles such as old shoes, bits of tins, broken bottles and other various articles in the receptacles.

It must be borne in mind that the refuse to be removed is limited to such things as might, if not removed, be injurious to health. The question arose, and was decided, in the case of *Collins v. Vestry of Paddington*, (1879) 43 J. P. 367.

In that case the vestry of Paddington sold to the plaintiff, Collins, all the breeze, dust cinders ashes, dirt, offal, garbage, filth and refuse which shall be collected and received by them within the parish of Paddington during one year, to be collected by the vestry and delivered to the plaintiff. During such collection the servants of the vestry appropriated various articles called "tots," which had been thrown into the dust-bins by the owners in order to be got rid of. The plaintiff now claimed damages under his contract for the value of the "tots" so appropriated. It was *held* the plaintiff could not recover, terms of the contract only applying to such refuse as the vestry were bound to remove, and they were under no obligation to remove "tots," but only such things as might be injurious to health. Cockburn, C. J., in his judgment, says: "The duty of the vestry, therefore, is to remove anything which might be injurious from a sanitary point of view. I do not think that it is the duty of the vestry to take everything which gets into the dust-bin; it may be very convenient to get rid of old shoes, bits of tin, and broken bottles, but these are not things which the vestry are bound to remove. The scavenger may have no objection to taking these things away and disposing of them on his own account, but in so doing he is not acting as a servant of the vestry, but to oblige the householder or for his own profit." The practice of "totting" as it is called, has long been established, and the results looked upon as the natural perquisites of the dust-man, so much so that quite recently, at the London Sessions, two dust-men were prosecuted for "tot-

ting," the borough council claiming the goods as their own. The jury, however, recognising, one can only assume, this ancient custom, acquitted. The householder's duty, however, is to see that he keeps nothing that may cause a nuisance, for, under S. 42 of the Public Health Act, 1875, it is provided that the occupier of a house is not to be liable to a penalty in respect to removing, or obstructing the local authority from removing any refuse, etc., which is produced on his own premises, and is intended to be removed for sale or for his own use, and is in the meantime kept so as not to be a nuisance.

Under S. 164 of the Act "totting" cannot be allowed in the Punjab.

Disposal of refuse.—Matters collected must not be disposed of so as to cause injury to other persons. In *Atkinson v. Corporation, of Huddersfield* (*Times*, April 20th, 1893) Chitty J., granted an injunction against the defendant's corporation from discharging snow, street sweepings, and other refuse into a river at a point above the mills of the plaintiffs so as to cause injury to the plaintiffs by the pollution of the river. In *Jones v. Welshpool Corporation*, (*Times*, November 18th, 1904) a nuisance arising from a field on which refuse was tipped was restrained by the granting of a perpetual injunction restraining further tipping so as to cause or occasion any nuisance to the plaintiff, the defendants undertaking within fourteen days to cover with road sweepings or earth such portions of this heap of refuse as had not already been so covered. In *Priest v. Manchester Corporation* (1915), 84 L. J. K. B. 1734 the defendants bought land for the purpose of tipping refuse thereon. Subsequently the vendor sold the remaining portion to a purchaser who formed a street and built houses abutting thereon. The defendants, acting under their powers, from time to time deposited refuse on the land purchased by them, and this gradually increasing in bulk and becoming impervious to surface water caused such water which previously flowed away from the street, to be diverted and overflow into the street and form holes, ruts, or gullies dangerous to users of such street. The plaintiff whilst crossing the street fell into one of these gullies and was injured : *Held*, that the gully in the street was a nuisance caused by the defendants without justification and that the defendants were liable in damages; *Held*, further, that where a local authority purchases land for the purpose of tipping refuse thereon such purchase does not impliedly authorise the local authority to tip in such a way as to cause a nuisance on adjoining land retained by the vendor when such tipping can be done

without causing a nuisance. Whether if it were impossible to use the land for tipping purposes without creating a nuisance the local authority would be so authorised?

Retention of valuable rubbish.—If rubbish is intended for sale or use, *e. g.*, for manure it need not be allowed to be removed; such rubbish must, however, be so kept as not to create a nuisance. If it creates nuisance it can be removed and the committee or its servants should not be obstructed.

Under 57 Geo. 3 c. 29, Ss. 59 & 60, the scavenger of a metropolitan district was entitled to take away from houses and premises "their soil, ashes, cinders, rubbish, dust, dirt and filth." It was *held* that these words included only such dust, etc., as were, in the contemplation of the owners, rubbish or refuse, and which they desired to dispose of in that character. Therefore, where brewers burnt coals in the process of brewing, which coals were only partially consumed by having once passed through the fires, and removed them mixed with the dust and ashes arising from the same fires to other premises, where they used them for heating water to cleanse their casks, it was *held* that the scavenger was not entitled to claim any of the articles so removed. *Filbey v. Combe*, (1837) 2 M. & W. 677. See also *Law v. Dodd*, (1848) 1 Ex. 845.

There are very few committees that have undertaken house scavenging in the Punjab. Dharmasala, Dalhousie and Jhelum committees are the only ones where the scavenging tax is leviable and where the scavenging has been undertaken.

159. (1) Subject to the provisions hereinafter contained with respect to the customary rights of sweepers, the committee may at any time undertake the house-scavenging of any house or building on the application or with the consent of the occupier.

Undertaking by committee of house scavenging generally.

(2) The committee may, by public notice, *except in cases to which Section 166 is applicable*, undertake the house-scavenging of any houses or buildings in the municipality from any date not less than two months after issue of the notice.

(3) The occupier of any house or building affected by the notice may at any time, after the issue thereof, apply to the committee to exclude that house or building from the notice.

(4) The committee shall consider and pass orders upon every such application within six weeks of the receipt thereof, and may, by any such order, exclude such house or building from the notice.

(5) In deciding whether to exclude any house or building from the notice, the committee shall consider, among other matters, the efficiency of the arrangements for house-scavenging made by the occupier (if any) and the purpose to which he applies the matter dealt with in house-scavenging.

Notes.

S. 112 of the old Act.

Recent changes.—The clause 2 of S. 159 has been amended by S. 54 of the Punjab Amendment Act, III of 1933; the words in italics have been inserted.

Analogous Law:—

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| S. 320, Bengal District Municipal Act, 1884 | Act, III of 1923. |
| S. 246, Bengal Municipal Act, XV of 1932. | S. 131, Cantonment Act, II of 1924. |
| S. 204, Behar and Orissa Municipal Act, 1922. | S. 155 (2), Central Provinces Municipal Act, II of 1922. |
| Ss. 369 & 142, Bombay City Municipal Act, III of 1888. | Ss 84 & 112, Rangoon City Municipal Act, 1922. |
| S. 129 (b), Burma Municipal Act, III of 1898. | Ss 196 & 197, U. P. Municipalities Act, 1916. |
| S. 374, Calcutta City Municipal | <i>English Law:—</i> |
| | S. 42, Public Health Act, 1875. |

What amounts to undertaking?—When arrangement is made and the sweepers undertake to transport, and deposit at the given place, nightsoil at a given rate, the municipality must be deemed to have undertaken scavenging with the consent of customary sweepers and therefore the rubbish and soil collected from houses is collected by the Board within the meaning of S. 58 U. P. Act, 1916 and the arrangement is not a sale to the Board. *Cf.* 45 All. 281; 1923 All. 480.

Note.—See S. 61 (e) on p. 290 under which this house-scavenging tax is leviable.

160. Notwithstanding anything in the last foregoing section, the committee shall not, except in accordance with the provisions of this chapter—

- (d) undertake the house-scavenging of any house or building in respect whereof any sweeper has a customary right to do such house-scavenging;
- (b) without the consent of the occupier undertake the house-scavenging of any house or building occupied by an agriculturist who himself cultivates land within municipal limits or in a village conterminous therewith.

Notes.

S. 113 of the old Act.

Analogous Law.—S. 200, U. P. Act, II of 1916.

having
in favour
customary
sweepers and
agricul-
turalists,

161. When once the committee has undertaken the house-scavenging of any house or building under this chapter, it may continue to perform such house-scavenging without the consent of the occupier for the time being of such house or building.

Continu-
ance of
house-sav-
enging once
undertaken
by com-
mittee.

Notes.

S. 114 of the old Act.

Analogous Law.—S. 198 of U. P. Act, II of 1916.

162. When the committee has undertaken the house-scavenging of any house or building, it shall be bound to perform the same properly until it shall have relieved itself of the obligation by an order under Section 159, sub-section (4).

Obligation
of committee
to perform
house - scav-
enging pro-
perly.

Notes.

S. 115 of the old Act.

Analogous Law:—

S. 100, N.-W. P. and Oudh Act,
I of 1900.

English Law:—

S. 43, Public Health Act, 1875.

Failure to perform the duty.—Under a corresponding provision of Public Health Act, 1875 a penalty is imposed on the local authority for failure to perform the duty. No such penalty is provided by the section in the Punjab Act. The remedy of the householder lies in the civil court to seek injunction or damages or he may move the Deputy Commissioner or the Commissioner under S. 234.

The committee cannot shelter itself under any excuse. An authority were summoned under this section for failing without reasonable excuse to cleanse the privies in a factory after having undertaken the cleansing of privies in their district. A local Act provided that all privies should be subject to the approval of the authority, but the privies in question had not been approved by them as they did not satisfy their requirements. The authority had themselves undertaken the cleansing of all privies which had received their approval. It was *held*, that although S. 42 authorized an authority to undertake the cleansing of privies "either for the whole or any part of their district," this did not empower them to undertake the cleansing merely of such privies as had received their approval, that the authority must be treated as having undertaken the cleansing of all privies in their district, and that the non-approval of the privies in question was not a reasonable excuse for failure to cleanse them. *Pegg and Jones, Ltd. v. Derby Corporation* (1909) 2 K. B. 511.

owers
municipal
vants for
use - scav-
ing pur-
ses.

163. The servants of the committee employed in house-scavenging may, at all reasonable times, do all things necessary for the proper performance of any house-scavenging undertaken by the committee.

Notes.

S. 116 of the old Act.

Analogous Law:—

S. 199, U. P. Act, II of 1916.

S. 249, Bengal Municipal Act,
XV of 1932.

S. 206, Behar and Orissa Muni-
cipal Act, 1922.

S. 137-B, Burma Act, 1898.

This section empowers the committee to require an owner to allow the servants of the committee reasonable access to or passage over his land for scavenging purposes, whether these purposes concern the land in question or other land. Cf. 1927 Rang. 60; 99 I. C. 339.

Do all things necessary. - Servants will have the right of entry into the building to remove the rubbish, etc., from privies and receptacles and the committee may require occupiers to allow its servants reasonable access to or passage over his land. Persons obstructing the municipal servants in the discharge of their duties may be proceeded against under S. 221.

Vesting
committee
collections
om house-
avenging

164. All matter removed by the servants of the committee in the course of house-scavenging shall belong to the committee.

Notes.

S. 117 of the old Act.

All matters. - Even matters which are not strictly rubbish or offensive matters as described in S. 158, if once allowed to be collected, will be the property of the committee and any person "totting" will be guilty of misappropriation.

Punishment
of customary
weepers for
negligence

165. (1) Should a sweeper who has a customary right to do the house-scavenging of a house or building (hereinafter called the customary sweeper) fail to perform such house-scavenging in a proper way and at reasonable intervals, the occupier of the house or building or the committee may complain to a magistrate.

(2) The magistrate receiving such complaint shall hold an enquiry, and, should it appear to him that the customary sweeper has failed to perform the house-scavenging of the house or building in a proper way or at reasonable intervals, he may impose upon such sweeper a fine which may extend to

ten rupees, and, upon a second or any later conviction in regard to the same house or building, may also direct the right of the customary sweeper to do the house-scavenging of the house or building to be forfeited, and thereupon such right shall be forfeited accordingly.

(3) Should any sweeper (other than a customary sweeper) who is under contract to do the house-scavenging of a house or building, discontinue to do such house-scavenging without having given 14 days' notice to his employer or without reasonable cause, he shall on conviction be punishable with a fine which may extend to ten rupees.

Notes.

S. 118 of the old Act.

Clause 3 has been added by Amendment Act, II of 1923. This will meet difficulties recently experienced by inhabitants when the sweepers left service without any previous notice or threatened to leave unless the wages demanded were paid. Such sweepers especially in large municipalities were not strictly customary sweepers and the committees or house-holders had no control over them under the existing provisions.

Analogous Law:—

S. 73 (VII), Bombay Municipal | Boroughs Act, 1925.
S. 201, U. P. Act, II of 1916.

Appeal.—The order of forfeiture under the section is open to appeal under S. 227.

166. (1) Should any person, who himself or any member of whose family residing with him cultivates land within municipal limits, or in a village within two miles from the municipal limits, fail to provide for the proper house-scavenging of any house or building occupied by him within the limits of the municipality, the committee may complain to a magistrate.

Punishment
of agricultur-
ists for negli-
gence

(2) The magistrate receiving the complaint shall hold an enquiry, and, should it appear to him that such person has not provided for the proper house-scavenging of the house or building, he may pass an order empowering the committee to undertake the same, and thereupon the committee shall be entitled to undertake such house-scavenging.

Notes.

S. 119 of the old Act. The present section has been substituted by S. 55 of the Punjab Municipal Amendment Act, III of 1933.

The word "agriculturist" has been removed as the word in the Punjab is liable to be misunderstood. The person need

not be an agriculturist, *i.e.*, belonging to agricultural tribe. Any body cultivating land is intended to be included.

Analogous Law.—S. 202 of U. P. Municipalities Act, 1916.

Delegation.—Powers under this section can be delegated under S. 33 (a) & (b).

Executive Officers Act.—The power conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Analogous Law:—

S. 261, Bengal District Municipal Act, 1884	Ss. 118 (d) & (j), Cantonment Act, II of 1924.
S. 407, Bengal Municipal Act, XV of 1932.	S. 140 & 194, Central Provinces Municipal Act, II of 1922.
Ss. 279 & 291, Behar and Orissa Municipal Act, 1922.	Ss. 294-297, Madras City Municipal Act, 1919.
Ss. 61, 172 & 175, Bombay Municipal Boroughs Act, 1925	Ss. 254-6, Madras District Municipal Act, V of 1920.
Ss. 48 (b) (i), 139, 140 & 141, Bombay District Municipal Act, III of 1901.	Ss. 127 & 167 (3), Rangoon City Municipal Act, 1922.
Ss. 399, 400 & 403, Bombay City Municipal Act, III of 1888.	Ss. 237 & 238, U. P. Municipalities Act, 1916.
S. 120, Burma Municipal Act III of 1898.	<i>English Law:—</i>
S. 396, Calcutta City Municipal Act, III of 1923.	Ss. 169 & 188, Public Health Act, 1875.

Slaughter Places.

Places for
slaughter of
animals for
sale.

167. (1) The committee may and shall when so required by the local Government, fix premises with the approval of the Dupty Commissioner either within or without the limits of the municipality, for the slaughter of animals for sale, or of any specified description of such animals, and may, with the like approval, grant and withdraw licenses for the use of such premises, or, if they belong to the committee, charge rent or fees for the use of the same.

(2) When such premises have been fixed by the committee beyond municipal limits, it shall have the same power to make bye-laws for the inspection and proper regulation of the same as if they were within those limits.

(3) When any such premises have been fixed, no person shall slaughter any such animal for sale within the municipality at any other place.

(4) Any person who slaughters for sale any animal at any place within a municipality other than one fixed by the committee under this section, if any places have been so fixed, shall be punishable with fine which may extend to twenty rupees.

Notes.

S. 98 of the old Act.

Recent amendment. Sub-S. 1 has been substituted by S. 56 of the Punjab Municipal Amendment Act, III of 1933. The words "Deputy Commissioner" have been substituted for District Magistrate. The committees can now be compelled to fix such places if they fail to do so.

Besides this section, S. 188 (e) empowers committees to frame bye-laws for the proper inspection and regulation of slaughter-houses. S. 206 also allows inspection of private slaughter-houses and prohibits the slaughter of animals not fit for human consumption.

Approval of Deputy Commissioner.—This must be obtained before the slaughter place is fixed. Where an act is done under an authority conferred by statute the conditions laid down by the statute must be strictly followed, otherwise the act is unauthorized and wrongful; where a slaughter-house was established without first obtaining the required approval, the committee, it was *held*, could not use the statute as a defence to an action brought against it on the ground that the act has created a nuisance. 31 I. C. 62.

Nuisance arising from slaughter-houses.—In order to constitute a nuisance at law it is essential that there should exist either actually or impliedly, (1) *injuria*, i.e., a wrongful act constituting or causing damage, and (2) *damnum*, i.e., damage, loss, or inconvenience. *Damnum absque injuria* gives no right of action.

Where the act or omission causing or constituting an alleged nuisance is unlawful *per se*, e.g., where it is of itself a violation of statutory provisions or of private common law rights, the law will presume damage to exist; but where the act is innocent and lawful, then the question whether it amounts to an actionable nuisance is one of fact to be determined not merely by an abstract consideration of the act itself, but by reference to all the circumstances of the particular case.

An act which offends the susceptibilities of individuals or the sentiments of a class is not, *ipso facto*, an actionable nuisance and cannot be made a ground for over-riding ordinary rights in property.

The establishment and maintenance of a slaughter-house for butcher's meat is *per se* an offensive trade, even

though it is not included as such in S. 99 (S. 121 of Punjab Act) of the Central Provinces Municipal Act, 1903.

But whether in any particular case it is an actionable nuisance depends mainly on the locality in which it is placed: and, therefore, the question is one of fact to be determined upon the circumstances of each particular case. 31 L. C. 62.

Where any slaughter-house is found to be a nuisance or injurious to the health of any of the inhabitants, the authority must take summary proceedings against the person carrying on the trade. It is sufficient to prove that the nuisance includes anything offensive to the senses, and not necessarily something injurious to health. It is not necessary to constitute a nuisance to show that the smell, etc., produced should be unwholesome. It is enough if it renders the enjoyment of life and property uncomfortable. "If there be smell offensive to the senses, that is enough, as the neighbourhood has a right to fresh and pure air. The only question, therefore is: Is the business (slaughter-house) as carried on by the defendant, productive of smells to persons passing along the public highway? A resolution or license from a municipal corporation is no defence to a prosecution for a public nuisance. As observed by Abbot, C. J., in *King v. Cross*, 2 C. and P. 423 "This certificate is no defence; and even if it were a license from all the magistrates in the country to the defendant to slaughter-houses in this very place, it would not entitle the defendant to continue the business there one hour after it became a public nuisance to the neighbourhood. If the defendant's slaughter-house was so conducted as to be a public nuisance at common law, the parish might at any time have caused it to be removed; and I am clearly of opinion that in this case it was so conducted as to be a nuisance at common law, and that the defendant would not have been and is not entitled to any compensation." It was in this case proved that smells proceeded from the slaughter-house which were a great nuisance to persons passing along the public highway.

Slaughter at places not fixed by committee.—There is no offence in slaughtering an animal not intended for sale at a place other than the slaughter house.

Penalty for use of such premises.—It is a question of fact in each case whether there has been user of the premises for slaughter. It was *held* that a person did not use a premises as a slaughter-house merely because he killed two pigs in the garden ground behind the house in which he resided. One single isolated act would not be sufficient. *Simpson v. Proctor*, (1896) 33 Sc. L. R. 270.

No person is liable to any penalty except a person who, without a license, uses a place or building as a slaughter-house either by letting it out for such purpose, or by employing servants and others for the purpose of killing cattle therein; and a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house or a butcher resorting accidentally or occasionally to a slaughter-house for the purpose of killing, and killing an ox or sheep there, does not use the place as a slaughter-house: 16 W. R. Cr. 4. The owner also uses the place by letting it out. The license is not to the person but to the place. The owner must be held to have allowed the place to be used as a slaughter-house in contravention of the provisions of the law and is also liable to the penalty provided by the statute. 14 Bom. L. R. 882.

Killing a goat in one's own house for one's own consumption is no offence. (1888) Rat. Un. C. C. 399.

Effect of establishment of a public slaughter-house.—Upon the establishment of a public slaughter-house, a corporation cannot, unless expressly empowered by statute, refuse to sanction plans for the erection of a private slaughter-house. Nor can it revoke a license in force in regard to a slaughter house or compel all the butchers in the district to use the public slaughter-house which might be provided. Where a public slaughter-house is provided, no special license is required to slaughter animals in the said slaughter-house. The very act of providing a place for being used as a public slaughter-house is a license to the public to use it as such, subject to the payment of the prescribed fee. Aiyangar's "Law of Municipal Corporations in British India," p. 643.

Rent or fees.—The committee will have no power to farm out such fees to contractors and a contract leasing out the collection of fees will be *ultra vires*. 21 Mad. L. J. 790 ; 36 Mad. 113.

Creating a nuisance by the establishment of a slaughter-house whether justified.—In a suit for an injunction to prevent on the ground of nuisance the user of certain premises of the defendants as a slaughter-house, it was alleged that if so used the consequences would be to endanger the health and materially interfere with the physical comfort and convenience of the occupants of plaintiff's house : *Held* that, assuming such use would have these consequences, such user would be a nuisance, but that the injunction sought could not be granted, unless it were reasonably clear that the user of the said premises as a slaughter-house would have these consequences ; but that if this was reasonably clear an injunction might be granted at the discretion of the court.

There is no authority for holding that the exercise of a lawful business, if it be not on other grounds a nuisance, amounts to a nuisance merely because it diminishes the value of property in the neighbourhood; diminution of the value of the one's property caused without injury to the property itself or to its enjoyment, by the legitimate use of his own property by a neighbour, amounts only to *damnum absque injuria*.

A municipal committee in the Punjab is not entitled to justify by statutory authority every nuisance committed in the fair and reasonable exercise of the powers conferred under the Municipal Act. There is a material distinction between the case of statutory powers given by the legislature, when the legislature directs that a thing shall at all events be done, and the case of similar powers when the exercise of the powers at all and the time and place of exercise are discretionary.

When a public body can construct its works without injury to private rights, it is in general bound to do so.

Further as a rule of construction of statutes, those who seek to establish that the legislature intended to take away the rights of private individuals, lie under the burden of showing that such intention appears by express words or necessary implication. Although, therefore, a municipal committee is empowered to erect a slaughter-house subject to the approval of the district magistrate and is also empowered to apply its fund for the construction, establishment, and maintenance of works of public utility, there is nothing in the Act which requires a committee to exercise this power, but it has an absolute discretion whether it shall exercise the power and as to the time of its exercise; as to the place also it has a discretion, not absolute but limited. P. R. 105 of 1888.

Public slaughter-houses.—S. 191* (2) of Madras District Municipalities Act, 1884 refers to a place other than a public slaughter-house. The very act of providing a public slaughter-house is a license to the public to use it as such and there is no obligation to take out a special license under S. 191 (2). 2 Mad. L. J. 206.

Removal of slaughter-house.—A municipal committee is not competent to take action under clause (4) unless the committee has fixed a certain place as the slaughter-house. The municipal committee of Kunjah issued a notice on the accused calling upon him to close his slaughter-house at its present position and remove it to another specified place.

* Corresponds to S. 167 of the Punjab Act.

There was nothing to show that the committee had fixed this latter as the only place for the slaughter of animals. On refusal to comply with the notice the accused was convicted under S 92 of the Punjab Municipal Act, 1884, (=S 167 of the present Act): *Held* that the municipal committee had no power to issue such an order under S. 92 and that they had not by issuing it established a slaughter-house and that no offence punishable under the section had been committed. P. R. 22 of 1889 Cr.

Power to grant or withhold licences, construction of statutes.—Under a corresponding S. 191 (2) of Madras Act, IV of 1884, it has been *held* that in the matter of the grant of licences the decision as to the propriety of granting or withholding the license must be made in each case with reference to its particular circumstances, and it would be *ultra vires* and in direct violation of duty to enter into an agreement with a particular person or persons to the effect that no application in the matter would be entertained or considered except from particular person or persons.

The powers of municipalities should be strictly confined within the limits of the enactments creating them, and the language of such enactments should not be stretched to cover attempts made under colour of such legislative provisions to interfere, in any way, with the exercise of ordinary rights of citizens. The existence of any powers in a municipality to act in interference of the ordinary rights of citizens always depends upon the grant of such powers by the enactment either expressly or by necessary implication as incidental to the powers expressly granted thereby or as indispensable to the object and purpose for which the municipality was created. Doubts as to the existence of such powers must be resolved against the municipality and in favour of the public. 28 Mad. 520.

168. (1) Whenever any animal in the charge of any person dies otherwise than by slaughter either for sale or for some religious purpose, the person in charge thereof shall within twenty-four hours either —

Disposal of
dead animals.

- (a) convey the carcass to a place (if any) fixed by the committee under Section 154 for the disposal of the dead bodies of animals, or to any place at least one mile beyond the limits of the municipality; or
- (b) give notice of the death to the committee, whereupon the committee shall cause the carcass to be disposed of.

(2) In respect of the disposal of the dead body of an animal under clause (b) of sub-section (1), the committee

may charge such fee as the committee may, by public notice, have prescribed.

(3) For the purposes of this section the word "animal" shall be deemed to mean all horned cattle, elephants, camels, horses, ponies, asses, mules, deer, sheep, goats, swine and other large animals.

(4) Any person bound to act in accordance with sub-section (1) of this section shall, if he fail so to act, be punishable with fine which may extend to ten rupees.

Notes.

S. 100 of the old Act.

Analogous Law:—

S. 350, Bengal District Municipal Act, 1884.	S. 149, Burma Municipal Act, III of 1898.
S. 255, Bengal Municipal Act, XV of 1932.	Ss. 119, & 186, Central Provinces Municipal Act, II of 1922.
Ss. 61 (1) (r), Bombay Municipal Boroughs Act, 1925.	S. 286, Madras City Municipal Act, 1919.
S. 385, Bombay City Municipal Act, III of 1888.	S. 157, Madras District Municipal Act, V of 1920.
Ss. 48 (m) & 141, Bombay District Municipal Act, III of 1901.	S. 275, U. P. Municipalities Act, 1916.

Removal and disposal of carcasses.—The weight of authority seems to have differentiated the removal and disposal of carcasses of animals from the removal and disposal of garbage and refuse matter. A dead animal is not *per se* a nuisance, and is not necessarily dangerous to the public health. The carcass of a dead animal, from whatever cause the death may have ensued, has some value to the property owner, and of this property he cannot be deprived without due compensation. Hence, under statutory authority, while a city may require the removal of a dead animal beyond the city limits within a reasonable time and to a specified reasonable distance, and in default thereof may deal with the carcass as a nuisance and take it and make such disposition as may be necessary for the public health these or similar regulations appear to mark the limit of legislative and municipal authority. To justify the seizure and removal of a carcass by virtue of police power, it must be shown that the dead animals are, or will become in some way, dangerous or deleterious to the public health. Therefore all ordinances and regulations which result in depriving the owner of his property in the dead animal without compensation, whether it be by prohibiting him from removing the carcass, by requiring him to pay a public contractor for its removal, or by making it unlawful for any person

other than the public contractor to remove and dispose of the carcasses, are in excess of the legislative power, and unconstitutional and void. *See* Dillon, p. 1029.

This section, however, is not intended to deprive owners of their rights in the animal. It is not, therefore, necessary that the animal should be necessarily taken to a place fixed under S. 154. If it is not taken there, it must be taken to any place situated at least one mile beyond the municipal limits. The removal must be effected within 24 hours, otherwise the animal will create nuisance by putrefaction.

Large animals.—Cats and dogs will probably not be covered by these words.

169. The committee—

Powers in
connection
with streets.

- (a) may lay out and make a new public street and construct tunnels and other works subsidiary thereto, and,
- (b) may widen, lengthen, extend, enlarge, raise or lower the level of, or otherwise improve any existing public street vested in the committee, and
- (c) may close temporarily any public street or any part thereof for any public purpose, and
- (d) may turn, divert, discontinue or close any public street so vested, and
- (e) may provide within its discretion building sites of such dimensions as it deems fit to abut on or adjoin any public street made, widened, lengthened, extended, enlarged, improved, or the level of which has been raised or lowered by the committee under clauses (a) and (b) or by the local Government, and
- (f) subject to the provisions of any rule prescribing the conditions on which property may be acquired by the committee, may acquire any land, along with the building thereon, which it deems necessary for the purpose of any scheme or work undertaken or projected in exercise of the powers conferred under the preceding clauses, and
- (g) subject to the provisions of any rule prescribing the conditions on which property vesting in the committee may be transferred, may lease, sell or otherwise dispose of any property acquired by the committee under clause (f); or any land vesting in and used by

the committee for a public street and no longer required therefor, and in so doing may impose conditions regulating the removal and construction of buildings upon it and the other uses to which such land may be put:

Provided that land owned by proprietors other than the local Government shall become the absolute property of the committee after it has continuously vested in the committee for use as a public street for a period of twenty-five years; but that the possession of such land that ceases to be required for use as a public street before the expiry of twenty-five years from the time that it became vested in the committee shall be transferred to the proprietor thereof, on payment by him of reasonable compensation to the committee for improvements of such land, and subject to such restrictions as the committee may impose on the future use of such land, and that should the proprietor be unable or unwilling to pay the amount of such compensation the committee may, subject to such conditions as it may deem fit, sell the land, and shall pay to the owner the proceeds, if any, over and above the amount of such compensation, which shall be paid into the municipal fund, or may dispose of it in such manner as it may deem fit.

Notes.

S. 85 of the old Act.

The section was entirely recast by the Amendment Act, II of 1923. Under this new section very large powers have been granted to municipal committees.

The power to lay out, alter, grade, and improve streets, like other legislative powers, is a continuing one, unless the contrary be indicated. It may, therefore, be exercised from time to time, as the wants of the public may require. Of the necessity or expediency of its exercise, the governing body of the corporation, and not the court, is the judge.

Recent changes.—Sub-clause (g) has been substituted by S. 57 of the Punjab Amendment Act. New powers have been granted to committees over public streets which are no longer to be maintained as public streets.

Analogous Law:—

S. 201, Bengal District Municipal Act, 1884.

Ss. 221, 222 & 233, Bengal Municipal Act, XV of 1932.

Ss. 172 & 178, Behar and Orissa Municipal Act, 1922

S. 114, Bombay Municipal Boroughs Act, 1925.

S. 90, Bombay District Municipal Act, III of 1901.

Ss. 289 (2) & (3), 290, 291, 296 (f) & 319, Bombay City Municipal Act, III of 1888.

S. 84, Burma Municipal Act, III of 1898.

Ss. 252 & 306-7, Calcutta City Municipal Act, III of 1923.

S. 192, Cantonment Act, II of 1924.

S. 90, Central Provinces Municipal Act, II of 1922.

Ss. 205-7 & 213, Madras City Municipal Act, 1919.

Ss. 163-5 & 172, Madras District Municipal Act, V of 1920.

Ss. 160, 161 & 169, (d) & (g), Rangoon City Municipal Act, 1922.

S. 219, U. P. Municipalities Act, 1916.

English Law:—

S. 33, Public Health Act, 1925.

S. 82, Highway Act, 1835.

S. 149, Public Health Act, 1875.

Executive Officers Act.—The power conferred upon the committees under clause (c) of this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Clause (a).—Power to establish and open streets.—The power to lay out, establish, and open streets and highways is conferred upon the municipality for the public benefit, and cannot be exercised solely for the use and benefit of private individuals. This power is legislative in its nature, and may be exercised either directly by the legislature, subject always to any constitutional restrictions, or by the municipality under authority delegated to it by statute.

Clause (b).—This would not apparently allow the narrowing of a public street; though under bye-laws framed under S. 188 (p) the committee will be justified in closing a public street to a particular kind of traffic and in setting up an iron rail so as to prevent vehicles with animals to get access to such streets: 50 I. C. 215. In some cases where committees are authorized to close streets they may close a portion of the street and thus narrow the streets but the authorities are not clear on the point. See Note on p. 1837 of Dillon's Municipal Corporations.

That the use of the streets for travel may be made safe and convenient, the legislature has conferred upon the committees the power in express terms to raise or lower the level of public streets and otherwise to improve them. When once a street has been graded or improved it does not prevent the committee from all time in future to alter the grades or to effect fresh improvements. Where a person constructed or improved his house according to the grade of

the street as effected by a committee he cannot prevent the committee from making further improvements or altering the level even though the first improvement was made under a bye-law which also ordained that the level shall be the true level for future construction. Such bye-law could not be taken in the nature of a compact and was, therefore, not final. *Cf.* Dillon, p. 1811.

Liability for change of grade.—The law is settled, as we shall have occasion hereafter more fully to illustrate, that unless expressly so declared by special constitutional provision, or by charter or statute, a municipal corporation is not liable to property owners for the consequential damages necessarily resulting from either establishing a grade or changing an established grade of streets, although improvements were made in conformity with the first grade. A statutory right to compensation for the change of a grade in a street is substantially a grant to the abutting owner of an easement in the street to have it maintained at its existing grade. When the statute gives to an abutter the right to compensation for a change of grade, he can only recover when the facts and conditions prescribed by the statute are made to appear. Hence, there must be an actual change of grade by the municipality. If the only acts performed by the municipality consist in causing the inequalities of the street to conform to an already established and existing grade, there is no change of the grade within the meaning of a statute giving the right to compensation therefor. If the right to compensation is conferred by constitution or by statute, and the legislature prescribes a special remedy in such cases, that remedy alone can be pursued and an action will not lie. But if the statute creates the right, and provides no exemption of the municipality from liability for resulting damages when the change of grade is effected without authority of law, or where it is made without complying with the provisions of the statute with reference thereto, under either of these conditions, the aggrieved abutter is entitled to recover his damages from the city in an ordinary action, although a special method of procedure may apply when the requirements of the statute are complied with: Dillon, p. 1820. *See also* pp. 297-8 of Lumley's "Public Health," 10th Edition.

Clause (c).—Public purposes of the Act.—These words are not defined in the Act itself but some indication as to what the purposes of the Act are may be gathered by a reference to S. 52 of the Act which details some of the objects to which the municipal fund may be devoted. *Cf.* 1929 Cal. 33; 56 Cal. 280, 12 I. C. 871. *See* Notes on pp. 255-6.

Acquisition for recoupment.—The committee may acquire land not only for the purposes of making a street but also land outside the proposed line of such street for purposes of recoupment. *Cf.* 48 Bom. 185; 1924 P. C. 3.

Closing of streets.—It will be observed that while under clause (d) a public street may be permanently closed without assigning any reason such streets can be closed temporarily only for public purposes such as repair or for works to be carried out in exercise of powers under clause (b).

Clause (d).—Exercise of powers *re* closing of streets.—It does not necessarily follow because certain powers are conferred upon the municipality by the legislature that the exercise of the powers is always valid. Powers materially affecting the welfare of the public must necessarily be exercised not arbitrarily or capriciously but in a reasonable manner and with due regard to the well-known maxim which is applied in cases where highways are concerned that regard for the public welfare is the highest law. *Cf.* 1925 Sindh 90, 81 I. C. 134.

Closing of public streets.—A right of permanent closing of a street includes the right of closing it temporarily for purposes of repairs because separate power is not granted by the Act for a temporary closing for repairs. The municipality has been given plenary powers to close the street without assigning any reason, and any member of public cannot raise questions as to the necessity for repair and its duration in a civil court. 1926 All. 538; 48 All. 560.

Obstruction of public way—Government's right to stop or divert public ways.—Government has no inherent power to block or divert an existing public highway. If they wish to obtain it, legislation is necessary. 1929 Bom. 94; 53 Bom. 187.

Dedication presumed from long user. Obstruction causing special damage. 1929 Bom. 94.

Loss of access to road and of right of drainage.—Where a part of the road in front of plaintiff's house was sold by municipal committee under powers under the Act and the plaintiff lost access to his house and right of drainage over the part of the road sold: *Held* that the plaintiff was entitled to maintain a suit against the purchaser as his right to access to the road and drainage had been infringed. The fact that he could use the old road by a detour was not sufficient to disentitle him to the relief. Municipal committee was impleaded in the case. 1 All. 557.

Effect of closing of streets.—The plenary power of the legislature over streets and highways is such that it may, in the absence of special constitutional restriction, vacate or discontinue the public easement in them, or invest municipal corporations with this authority. But the power to vacate streets and public places is not inherent in a municipality by reason of its creation and existence, nor is it to be implied from the fact that it is vested with general control over such streets and places. The power must be expressly conferred by legislative enactment, or must be necessary to the exercise of some power expressly conferred; and any requirements imposed by statute must be substantially complied with. The exercise of the power is discretionary on the part of the municipality; and in the absence of abuse the courts will not interfere with its exercise. Without a judicial determination, a municipal corporation, under the authority conferred in its charter "to locate and establish streets and alleys, and vacate the same," may constitutionally order the vacation of a street; and this power, when exercised with due regard to individual rights, will not be restrained at the instance of a property-owner claiming that he is interested in keeping open the streets dedicated to the public. The power to vacate a street or public place is to be exercised in the public interest, and not for the sole purpose of benefiting a private party. In Pennsylvania, and in some other States, it is held that the vacating of a street is not a taking of the property of an abutter which entitles him to compensation under the constitutional provision, but there are many decisions to the effect that when the vacation of a street or highway interferes with the access to the abutter's property in such a manner that he is specially and peculiarly damaged, suffering a loss or injury differing from that of the public, not merely in degree, but also in kind, the abutter is entitled to compensation under statutory provision or under the constitutional prohibition against the taking or damaging of private property for public use without making just compensation therefor.

The question whether an abutting owner is entitled to receive compensation for property taken by the vacating of a city street, in its nature, depends, it has frequently been held, upon the ability of the claimant to establish that he is specially and peculiarly damaged thereby, *i. e.*, that he suffers an injury differing in nature, and not merely in degree from that suffered by the public at large. The consideration of the question whether the abutting owner is specially and peculiarly damaged has resulted in a difference of opinion on the part of the courts; some courts being of the opinion that under certain circumstances the injury is special and

peculiar, whilst other courts under the same circumstances have regarded it as only such as is sustained by the general public. The existence of the special and peculiar damage is, however, more readily recognized when the property abuts upon the particular part of the street that is vacated. Many decisions declare that as a general rule, only property abutting upon the portion of the street closed is specially damaged by the vacation, and that only such abutter can recover damages or compensation for the taking of this property. Hence, if the property of the abutter is located on another street, or on a different part of the same street, he is not entitled to compensation or damages. In other States this limitation is not observed, and decisions are to be found to the effect that the owner of property which does not abut on the part of the street closed is entitled to compensation, provided he is able to prove special and peculiar damage. The right to injunctive relief, where the abutter's right exists generally, against the vacating of a city street without making compensation, is usually, although not uniformly, conceded; but even in such cases an injunction will only be granted upon the application of a property-owner who can show that he suffers special and peculiar injury to his property by the closing of the street.

When the public or municipal right in a city street is limited to a mere easement for street purposes, the fee of the street reverts upon vacation to the possession of the owner discharged from the public easement. If, however, the fee of the vacated street be in the city, as in the case of statutory dedications or otherwise, a diversity of opinion has arisen. In some cases it is held that the fee remains in the city, and that the land may be disposed of by the municipality, whilst other courts have with much seeming reason construed the fee to be a *base* or *determinable fee*, of which the municipality is divested upon the vacation of the street, and which reverts to the original owner or his grantee, or to the abutter. In other jurisdictions often by virtue of express statutory provision, the fee attaches to the abutting property on either side of the street in proportion to frontage. Dillon, pp. 1835 to 1845.

Clause (f).—*Cf.* Provisions of S. 58 of the Act which authorizes the committees to acquire more land than is actually necessary for a street.

Scheme.—Any scheme, for instance, to improve the town for the purpose of removing overcrowding or any scheme for new lay-out of any congested part of the city or town. The section in effect gives very wide powers to committees to improve the town on lines laid down in the Town Planning

Acts without resort to the specific provisions of such Acts. Cf. Also the provision of S. 192 under which building a scheme is contemplated.

Of recent years, there is a growing demand for the preservation of natural beauty and conservation of the amenities of the neighbourhood resulting from the manner in which it is laid out or built upon. The committees have sought to prevent encroachment of the undesirable features, unsightly erections and obnoxious trades. Restrictions dictated by æsthetic considerations cannot be imposed by bye-laws or otherwise on owners of private property when erecting or re-erecting them. The legislature has, it appears, to secure these objects empowered committees to impose conditions on the transfer of the sites so far as new building on the new areas laid out are concerned.

Prohibition of traffic.—S. 169 alone without express powers conferred by S. 183 (*p*) will not enable the committee to prohibit a particular kind of traffic from a specific street. 51 I. C. 341.

Section (g).—The power of Commissioners to transfer land including roads must be exercised for the purposes of the Act, namely, the improvement of the municipality. Where a road as a road had become useless to the general public and the greater portion of it had been closed and was of no use and only a small portion still remained and it could only be used by the plaintiff and the votaries of the temple to which it led: *Held* that in these circumstances the committee cannot be said to have acted beyond the power vested in it by the law in regarding this portion of the road as no longer required for the purposes of the Act and selling it. They did not certainly do something prohibited by law or inconsistent with the Act. Cf. 1929 Cal. 33; 56 Cal. 280.

There is nothing in the Act which prohibits the committee to stop or divert a road or to dispose of a road. The only limitation to their power given by the Act is that they must exercise such power only for the purposes of the Act. The word 'land' would include road. *Ibid*.

Sale of land forming a street.—Before the addition of proviso it was questionable if the committees had power to sell land of the streets when the soil of street was not owned by them.

The cases doubting this power proceeded on the presumption that the soil of the street belongs to the adjacent owners and on the interpretation of the word "vest" which it has been held does not confer the rights of absolute ownership.

There can be no doubt as to absolute right of transfer in such streets as have been constructed by municipalities on land either acquired or owned by them.

In 7 All. 362 on the corresponding section of the N. W. P. and Oudh Act, it was *held* that the section was not intended to deprive persons of any private right of property they might have in the land used as a public highway or to confer such right on the municipality nor has the section any such effect. In 2 Cal. p. 425, it was *held* the Commissioners have no power to stop or obstruct a public way in the absence of express authority under the Act. 2 Cal. 425; 13 Cal. 171.

Jurisdiction of Civil Court to interfere.—If the municipality acts *ultra vires* the civil court has the power to interfere as also the power to grant proper relief to the aggrieved party. This is the principle on which civil courts interfere with acts of public bodies such as municipal bodies created by statutes. 1929 Cal. 33; 56 Cal. 280.

Proviso.—By the proviso the committees are rendered absolute owners of the soil of streets after it has continuously vested in them for a period of twenty-five years. When a new street is declared a public street under S. 171 and when it becomes a public street by public funds being spent on it it will not become the absolute property for 25 years. When such a street before the expiry of 25 years is no longer required for purposes of a street, it will revert to the original owners on payment of reasonable compensation and subject to restrictions to be imposed on the future use of such land. In case the owner is unable or unwilling to pay such compensation the land will be sold and the sale-proceeds less the reasonable compensation will be paid to the owners.

Who will be owners?—They will be the persons who originally laid out the street or the abutting owners if these were assigned the land under the proposed streets.

Powers under the section.—The municipality has power to abandon an old road for a new one. They can straighten a crooked road and dispose of the fragment of the old road that fall outside the alignment of the new one. 11 I. C. 28.

Where the sale stopped the right of drainage and access to the public road of the owner of a house abutting on the street sold, the owner was *held* entitled to maintain an action against the purchaser. 1 All. 557.

170. (1) No person shall cut down any trees or cut off a branch of any tree, or erect or demolish any building, or part of a building, or alter or repair the outside of any building, where such action is of a nature to cause obstruction, danger or

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annoyance, or risk of obstruction, danger or annoyance, to any person using a street, without the previous permission in writing of the committee.

(2) The committee may at any time by notice require that any person doing or proposing to do any of the acts referred to in sub-section (1) shall refrain from beginning or continuing the act unless he puts up, maintains, and provides from sunset to sunrise with sufficient lighting such hoardings or screens as are specified or described in the notice and may further at any time by notice require the removal, within a time to be specified in the notice, of any hoarding or screen erected in anticipation or in pursuance of any of the said acts.

(3) Whoever "contravenes the provisions of sub-section (1) or fails to comply with the terms of a notice under sub-section (2) shall be punishable with fine which may extend to fifty rupees and when the contravention or non-compliance is a continuing one with a further fine which may extend to five rupees for every day after the first during which the contravention or non-compliance continues.

Notes.

S. 170-A has been renumbered as S. 170 by S. 59 of the Punjab Amendment Act, III of 1933 while the original S. 170 has been omitted from this place by S. 58 of the Punjab Amendment Act, III of 1933 and incorporated in S. 173.

S. 170-A now S. 170 was introduced by Amendment Act, II of 1923.

Analogous Law:—

S. 235, Bengal District Municipal Act, 1884.

S. 231, Bengal Municipal Act, XV of 1932.

S. 176, Behar and Orissa Municipal Act, 1922.

S. 153, Bombay Municipal Boroughs Act, 1925.

S. 123, Bombay District Municipal Act, III of 1901.

Ss. 326 & 461 (cc) Bombay City Municipal Act, III of 1888.

S. 93-A, Burma Municipal Act,

III of 1898.

S. 231, Cantonment Act, II of 1924.

S. 227, Madras City Municipal Act, 1919.

S. 187, Madras District Municipal Act, V of 1920.

S. 213, U. P. Municipalities Act, 1916.

English Law.—

S. 34, Public Health Act, (Amendment) 1890.

S. 32, Public Health Act, 1907.

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

170-A. (1) No person shall lay out or make or commence to lay out or make a street without the sanction of the committee.

Notice to be given and sanction obtained before making a street. +

(2) Every person who intends to lay out or make a street shall give notice in writing to the committee of such intention.

(3) Where a committee has issued an order under clause (b) of Section 170-B no notice under sub-section (2) shall be deemed to be valid until the particulars required under the order have been furnished to the satisfaction of the committee.

Notes.

Ss. 170-A to 170-F had been newly introduced in the Act by the Amendment Act, II of 1923. These sections had been borrowed from the U. P. Act, II of 1916. S. 170-A (now S. 170) empowers committee to require the protection of streets during erection or demolition of buildings or during cutting down of trees.

S. 60 of the Punjab Amendment Act, III of 1933 have re-numbered Ss. 170 B to 170-G as Ss. 170-A to 170-F. Though the Amendment Act does not say so the references in the sections themselves must also be taken to the sections as renumbered under General Clauses Act.

Analogous Law:—

S. 225, Bengal Municipal Act, XV of 1932.

S. 164, Behar and Orissa Municipal Act, 1922.

Ss. 61 (1) (u) & 117 (1) Bombay Municipal Boroughs Act, 1925.

S. 48 (o), Bombay District Municipal Act, III of 1901.

S. 91 (1), Bombay Local Boards Act, VI of 1923.

S. 302, Bombay City Municipal Act, III of 1888:

S. 96, Burma Municipal Act, III

of 1898.

S. 314, Calcutta City Municipal Act, III of 1923.

S. 216, Madras City Municipal Act, 1919.

S. 176 (1) & (2), Madras District Municipal Act, V of 1920.

Ss. 165 & 174, Rangoon City Municipal Act, 1922.

S. 203, U. P. Municipalities Act, 1916

English Law:—

Ss. 157 & 191, Public Health Act, 1875.

Comments.—Notice under clause (2) should not be vague but requirements should be specified and described in sufficient detail in the notice.

Some of the big cities have outgrown their old boundaries. The new suburbs have not followed any system and the evils existing in the old towns have generally been allowed to be reproduced in the new areas developed during the last quarter of a century. The new Act passed in 1911 allowed some control over such developments by empowering

the committees to refuse sanction to erection of buildings if they did not conform to a regular scheme. Committees have been making layout plans of undeveloped areas and compelling people to respect these layouts when erecting buildings. The Ss. 170-A to 170-F now introduced give large powers of control over the future developments of municipal towns and much will depend on the way in which powers newly granted are exercised. These powers, it is regretted, are not being properly used and their importance is not being realized. The committees should see that new streets are of sufficient width not only to meet the existing traffic and the requirements of the near future but are of sufficient width to meet the traffic that may be expected to be put on such streets in distant future, say a hundred years hence.

Lay out or make a new street.—When can a person be said to lay out or make a new street is not easy in every case to determine. The term “new street” means a road old or new on both sides or on one side of which more or less continuous houses have recently been built so as to give it for the first time the character of a new street.

See Explanation to S. 170-D.

The following English authorities, it will be noticed, show that an ancient highway may become a new street within the meaning of S. 157 and other sections of the Public Health Act (corresponding to these new sections) if houses are built along its sides so as to make it a street in the ordinary acceptance of the term: *Pound &c. v. Plumstead District Board of Works*, (1871) L. R. 7 Q. B. 183; *Dryden v. Putney (Overveers of)*, (1876) 1 Ex. D. 223; *Robinson v. Barton Eccles. L. B.*, (1882) 21 Ch. D 621; *Att.-Gen. v. Rufford*, (1899) 1 Ch. 537. See also *Hampstead Vestry v. Cotton*, (1885) 16 Q. B. D. 475; *Holden v. St. Mary, Islington (Vestry of)*, (1886) 2 T. L. R. 740. In *Robinson v. Barton Eccles. L. B.*, *supra*, Jessel, M. R., said at p. 632: “It is often a difficult thing to say when a street begins to be a new street, that is, when it begins to alter its character. New streets may be made under different circumstances. The whole land on both sides may belong to one owner. Then, suppose, he conceives a design of making a new street and has a plan drawn. To my mind, he does not begin the laying out of the street within the meaning of the Act of Parliament. The Act of Parliament is not concerned with what people do upon paper, but with what they do in point of fact and upon the land. Then, when would such an owner begin to lay out and form a street? To my mind, he would do so when he built his first house, having the intention to go on to make a street. He

would then have begun to lay out and form a street, and it would from that moment begin to be a street. But streets may be formed in another way. Suppose that along the line of that which would eventually be considered a street, there are a great many owners. No one of them could make a plan for the whole, but it may be clear that all of them are intending to build with regard to and so as to utilize an existing roadway. How, then, will those people lay out and form a street? Each of them, by what he does on his own land, would be taking part in laying out and forming a street. Which of them begins? I should say the one who first begins to build begins to form a street; and if you find that there are several proprietors along a line, each of whom acts so that the tribunal comes to the conclusion that all of them intend to build in the same direction, then the tribunal would have the right to say that there is a common intention amongst all these people to build in a particular course which will produce a street, and, therefore, the first of them who, in virtue of that common idea, begins to build, is beginning to form and lay out a street, and he and all others are subject to the jurisdiction of the Board. There is another case to which my Lord has alluded, where there are several proprietors along a long line, but no tribunal could say that there ever was at the same time an intention amongst them all to build. One man at the end of the street may have begun to build, but the others have not built nor laid out their lands as building lands, or advertised it as building land, nor done anything to show an intention to build. Then the street really forms itself, as it were, by gradual accretion without any common intent. In such a case, you have to wait until you can see by the course of building that there is a common intent to build. The moment you see that, you come to the conclusion that a street has begun to be formed." Further on, the same learned judge observed as follows :—

"There are two ways in which a street may come into existence where there was no street before. A person may take a grass field, or a country lane (for, in my opinion, it makes no difference whether or not there was a public highway and lane, or a footpath existing before, which is thrown into the street, and is utilised, or whether there was nothing but a mere plot of grass land out of which a new roadway is made), he may take it and build continuous lines of houses so as to form what is commonly known as a street. When I say continuous lines, I do not mean that there are to be no breaks or intervals, but there must be a certain degree of continuity. A new street may arise in another way, and that is, where it is not from the first laid out as a

street in a formal manner, but may be considered to grow up, so to say, of itself. This often happens where there is an existing highway, and people build houses along the sides of that highway, so that without any intention of laying out a street, the street grows. When does it become a street? This question cannot be answered until you know the locality. It must be a question in each particular case when the road becomes a street. At sometime or other it becomes a street, and as soon as it does so it is a new street and not the less a new street because some of the houses were built before it was a street." In the same case, when before the House of Lords, Lord Selborne, L. C., referring to the definition of "street" in S. 4 of Public Health Act, 1875, said that "the definition was not meant to prevent the word receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there was nothing in the context or the subject-matter to the contrary, to be applied to some things to which it would not ordinarily be applicable." And he continued: "I look upon this portion of the interpretation clause as meaning neither more nor less than this, that the provisions contained in the Act as to streets, whether new streets or old streets, shall, unless there be something in the subject-matter and the context to the contrary, be read as applicable to the different things. It is perfectly consistent with that that they should be read as applicable, and should be applied to those things to which they in their natural sense apply, and which do not require any interpretation clause to bring them in; and in the natural and popular sense of the word "street," or the words "new street," I should certainly understand a roadway with buildings on each side (it is not necessary to say how far they must or may be continuous or discontinuous), and by "new street a place which before had not that character, but which by the construction of buildings on both sides, or possibly on one side, has acquired it." 8 App. Cases, 798.

In *Att.-Gen. v. Gibb*, (1909) 2 Ch. 265, Parker, J., held that the words "new street" in S. 157 were not confined to new streets in the popular sense of roadways with houses on either side, but may include lanes, alleys and passages, not intended to have houses on either side. In that case G employed a builder to erect cottages, and the builder deposited plans showing that he intended to erect them sixty-seven yards from the road with an approach consisting of a footpath five or six feet wide. The surveyor pointed out to the builder that such an approach would not satisfy the "new street" bye-laws, and the builder, without

consulting G, said that a roadway of the required width would be made at the termination of a tenancy over other land belonging to G, and sent in an amended plan showing such road. The surveyor and chairman gave provisional consent to the plans and allowed the work to be commenced, and subsequently the plans were approved subject to a condition that the road should be made up, and the builder wrote saying that the road would be made in due course, but for the present paths would be made. In the result a pathway was formed 202 feet long, and no road was made within a reasonable time. In an action against G and the builder for (1) a declaration that they had laid out a "new street" in contravention of the bye-laws by reason of the same not being thirty six feet wide and not having been constructed for use as a carriage road, (2) a mandatory injunction or order requiring them to widen the said new street, it was *held* that the footpath was a new street, that the builder was G's agent, and that an injunction should be granted against G; as against the builder the claim was dismissed.

What amounts to "laying out" a street.—By the Metropolis Management Act, 1862, S. 98, no existing road, etc., might be "formed or laid out for building as a street" for carriage traffic until widened to forty feet. With reference to this provision, Blackburn, J., said: "Whether an intended building is sufficient to make a street is a question of more or less; one house would not be sufficient. Whether the intended houses are sufficiently numerous and continuous is a question of degree, and must be a question of fact for the magistrate. When may the owner be said to have begun to lay out the road for that purpose? I do not think that if a person merely puts up a hoarding or leaves the way without any fence, or leaves the old fence untouched while he is building, he can be said to have laid out the road; but as soon as he begins to put up fences, and marks out the boundary, which he intends to be the permanent boundary between his building and the road, then he may be said to have begun to lay out the road for the forming of the street; and this also is a question of fact for the magistrate." See *Taylor v. Metropolitan Board of Works*, (1867) L. R. 2 Q. B. 213. In that case plots of land had in 1864 been sold for building purposes. These plots abutted on a lane which was an ancient carriage-way and had old buildings at intervals on both sides. The lane varied in width from forty-one to twenty-eight feet; opposite the plots it was twenty-eight feet only, and on the other side of the road was a permanent enclosure belonging to a church, and other old buildings. In July 1865 A bought the plots, houses having been erected on two

of them the front walls of the house being twenty-seven feet from the old wooden fence of the lane. On September 26th he began to remove the fence, which had been left untouched, and to substitute a permanent wall and railing. The magistrate found that he thereby commenced to form and lay out the road for building as a street. It was *held* that he was properly convicted under S. 89 of the Act, of 1862, but that the section would have been satisfied had A set back his fence to a distance of twenty feet from the crown of the road, although the result would have been to leave the road less than forty feet wide. This case may be compared with one decided in the following year under the same section. The respondent was the owner of land upon which he had, in 1866, erected some houses. The gardens at their backs abutted upon an ancient lane, and some of the owners of land adjoining this lane had in 1867 begun to form it into a street for carriage traffic within the meaning of the section. The respondent himself had done no act towards forming or laying out the lane as a street for the purposes of carriage traffic, except that in 1866 he removed an old bank and thorn fence and substituted an oak fence three feet within his own land, nor had he any intention of doing any such act, or of putting up any building fronting towards the lane: *Held*, that he had not infringed the section, and was not bound to set back his oak fence so as to leave a space of twenty feet between it and the centre of the land. *Metropolitan Board of Works v. Clever*, (1868) L. R. 3 C. P. 531. It had previously been held that the section did not apply when new buildings abutted in the rear upon an old lane of less width than forty feet. *Metropolitan Board of Works v. Cox*, (1865) 19 C. B. (N. S.) 445.

Dedication not necessary.—It is not necessary that the new street should be dedicated to the public. *St. Mary, Uslington (Vestry of) v. Barrett*, (1874) L. R. 9 Q. B. 278. In general, whether a ground forms part of a street, or is private property, is a question of fact. *Bell v. Great Crosby U. D. C.*, (1913) 77 J. P. 37; 108 L. T. 455.

Person "who lays out" a new street.—An owner of land gave notice to the authority of his intention to lay out certain new streets, including a certain back street, and deposited plans of such streets. Notice was also given by a builder of his intention to dig and lay out the foundations of four cottages in the back street, and a plan of such street was deposited by him. In the plans deposited by the owner and builder, the back street, in which it was intended to build the cottages, was shown to be only twelve feet wide, whereas the minimum width required by the bye-laws was eighteen feet. The authority gave to both the owner and the builder notice

of their disapproval of such plans, and on the builder proceeding to build the cottages according to the disapproved plans, they summoned him for laying out a new street of insufficient width, contrary to the bye-laws. It was held that such summons was rightly dismissed, as the owner, and not the builder, was the person who had laid out the street. *Sunderland (Mayor of) v. Brown*, (1880) 44 J. P. 831. Per Hawkins, J. : "All that the builder was employed to do was to build certain cottages upon the line of a street already laid out.

In view of the recent introduction of Ss. 170-A to 170-F and S 192 controlling the laying out of new streets, the committees are no longer under any necessity to get any lay-out plans sanctioned, as required by Explanation to S. 193 and now deleted and the question whether the committee by getting lay-out plans sanctioned could deprive owners of their private rights in property included in lay-out streets is no longer of any great importance. However, the following quotations from Dillon's work on "Municipal Corporation" will show how the matter has been looked at by American courts:—

Dedication by platting and sale; necessity of acceptance by public.—The cases uniformly hold that the *platting* of land by the owner and the sale and conveyance of lots with reference to the plat, constitute strong evidence of intent to dedicate to public use the streets and ways indicated upon the plat. But there appears to be some conflict of authority on the question whether the dedication is complete, and public rights are created without any act of acceptance by the municipal or public authorities, or without such user by the public as will imply an acceptance. In this connection it must be kept in view that the platting and sale create certain rights in the grantees of the original owner, which, as between the grantor and the grantee, are irrevocable in their nature. But do these rights enure to the benefit of the public without any user by the public in general, or acts of acceptance by the public or municipal authorities? Many of the decisions appear to hold that an irrevocable dedication to public use is complete and perfect by the mere making and filing of a plat and the sale of lots with reference thereto without any acts of acceptance by public user, or by the municipal authorities. But it is to be observed of these decisions that in many of them sufficient acts of acceptance by the public authorities or by public user were shown, or, where such was not the case, that the facts and circumstances justified the inference that the dedicatory had not revoked or re-called his tender of dedication. Other decisions recognize the fact that, as against the owner who has platted the land

and has sold lots with reference to the plat, the owner, having unequivocally manifested his intention to abandon the property and to dedicate it to public use, is, by making the plat and selling lots with reference thereto, precluded from exercising any power of retraction, at least, without the consent of those to whom he has sold the property, and on such platting and sale the public right to appropriate the lands to public use at any time when the public wants require it immediately attaches. But other decisions recognize a clearly defined distinction between the rights acquired by the public through dedication effected by platting and sale, and the private rights acquired by the grantees by virtue of the grant or covenant contained in a deed which refers to a plat, or bounds the property upon a street through the grantor's lands. These decisions adopt the view that where lands are platted and sales are made with reference to the plat, the acts of the owner in themselves merely create private rights in the grantees entitling the grantees to the use of the streets and ways laid down on the plat or referred to in the conveyance. But these rights are purely in the nature of private rights founded upon a grant or covenant, and no public rights attach to such streets or lands until there has been an express or implied acceptance of the dedication, evidenced either by general public user or by the acts of the public authorities. In this view, the making of the plat and the sale of lands with reference thereto are merely evidence of an intent to dedicate, which like every other common law dedication, to be made complete and carried into effect so as to create public rights, must be accepted and acted upon by the public. Dillon, p. 1737-40.

Appropriation to street uses of lands subject to private easements. — When the owner of a tract of land divides it into streets, blocks and lots, and sells lots with reference to a plat or map or deeds bounding upon the streets, he devotes the land to use as a street at least as between himself and his grantees who have purchased lots. His grantees acquire an easement in the strip of land for use as a highway in order to have access to and from the lots purchased. They are entitled to have it kept open as a street for their benefit; and thereafter the owner holds the title to the fee encumbered by an easement for the benefit of the grantees of the lots which he has sold. The rights which the several grantees of the purchased lots on both sides of the street thus acquire impress upon the land all the characteristics of a public street, though it may not have been completely dedicated by the owner to that purpose, or accepted by the public authorities as a highway. The municipality by virtue of legislative authority may lay out a public street over the

strip of land thus devoted to street uses and may acquire by condemnation the necessary rights in the strip for that purpose. The compensation to be paid to the owner of the soil will depend upon the nature and character of the estate taken by the city. If the title to the street be not reserved by the original owner, but be vested in the owners of the lots abutting on the street, the ownership of the fee of the land has been held to have a substantial value to the abutting property owner, in the degree of control it gives him over the uses to which the street may be put. It vests him with the right to defend against and to enjoin a use of, or an encroachment upon, the street, under legislative or municipal authority, for purposes inconsistent with those uses to which streets should be, or have been ordinarily subjected, unless just compensation is provided to be made. Ownership of the land in the street is subject only to the public easement therein as a highway. In the absence of a provision for compensation, the taking of the street for some new or additional and inconsistent use would be illegal. But if the abutting owner does not own the fee of the land in his street he has no such right to compensation and is remediless against a taking of the street under legislative or municipal sanction for other uses, except such uses be unreasonable, and not in their nature so improper as to obstruct free passage upon the street, or to amount to a nuisance, or to deprive him of the enjoyment of easements of light, air, and access. Hence, the fee of the street may be valuable to the abutting owner, and that value is sufficient to justify an award of substantial compensation to him, when the municipality takes the fee, and not merely an easement for street use. But if the owner has parted with all the lands abutting on the street and no longer has any rights outside the street to protect by reason of his ownership of the fee, it would seem that these considerations do not necessarily apply, and under such circumstances an award of nominal damages may be justified when the fee of the street is taken by the city purposes. If, however, the city does not attempt to appropriate the fee of the land for street uses, but merely an easement, then the public easement is merely superinduced upon and added to the private easement which already exists in favour of the owners of the different lots, and under such circumstances an award of only nominal damages is not only justified, but is usually required by the circumstances.

The rights or interests of an abutting owner who holds only an easement in a strip of land which entitles him to have it maintained as a street or road, are not damaged in consequence of the taking of the fee of such road or street as a street or highway. After it is thus taken and maintained

by the public authorities, the abutting owner's easement still remains unimpaired. He has all the right in the road or highway that he had before enjoyed, and no property of his is taken by the proceeding. Dillon, pp. 1804-7.

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170-B. The committee may, within one month of the receipt of the notice required by sub-section (2) of Section 170-A issue —

- (a) an order directing that for a period therein specified, which shall not be longer than one month from the date of such order, the intended work shall not be proceeded with, or
- (b) an order requiring further particulars.

Notes.

Analogous Law: —

- S. 225, Bengal Municipal Act, XV of 1932.
- S. 165, Behar and Orissa Municipal Act, 1922.
- S. 117 2, Bombay Municipal Boroughs Act, 1925.
- S. 91 2 (a), Bombay District Municipal Act, III of 1901.
- S. 302-A, Bombay City Municipal Act, III of 1888

- S. 96, Burma Municipal Act, III of 1898.
- S. 314, Calcutta City Municipal Act, III of 1923.
- S. 216, Madras City Municipal Act, 1919.
- S. 176 (5), Madras District Municipal Act, V of 1920.
- S. 201, U. P. Municipalities Act, 1916.

English Law: —

- S. 157, Public Health Act, 1875.

Comments.—This and the following sections correspond to Ss. 18 and 193 of the Act regulating the constructions of buildings. On the receipt of a notice under S. 170-A the committee has to sanction or refuse the sanction within two months, *vide* S. 170-C. Before passing orders under S. 170-C, the committee may within one month issue an order prohibiting the person giving the notice from proceeding with the intended work, and this prohibition cannot last longer than a month. If no orders are issued under S. 170-B (a) then the street is to be sanctioned or refused within two months of the receipt of notice under S. 170-A, and if an order under S. 170-B (a) has been issued then the committee is to deliver the order of sanction within the period for which the work has been prohibited under clause (a) of S. 170-B. The orders of sanction or refusal are to be made and delivered within two months in any case though the period may be shorter if orders under clause (a) have been issued. In any case the period for deliberation and decision cannot exceed two months. When order under S. 170-B (b) has been issued, the committee is not bound to pass any orders for sanction or otherwise unless these particulars are supplied. The committees will have two months to pass orders

of sanction or refusal from the time the particulars are supplied.

Sub-clause (a) presupposes that without such order the applicant can proceed with his intended work — this is inconsistent with the provisions of S. 170-A under which the applicant cannot commence the work without sanction.

170-C. Within two months after the receipt of the notice required by sub-section (2) of Section 170-A the committee may refuse to sanction the proposed street, or may sanction it either absolutely or subject to such written directions as to level, metalling, paving, means of drainage, direction and width as the committee may deem fit to issue and the person laying out or making such street shall comply with the sanction of the committee in every particular :

Sanction
of committee
with regard
to new
street.

Provided that should the committee neglect or omit for two months after receipt of such notice, or if an order has been issued under clause (a) of Section 170-B fail within the period specified in such order to make and deliver to the person who has given such notice an order of sanction or refusal in respect thereof, it shall be deemed to have sanctioned the proposed street absolutely.

Notes.

Analogous Law:—

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| S. 225, Bengal Municipal Act, XV of 1932. | S. 314, of Calcutta City Municipal Act, III of 1923. |
| S. 166, Behar and Orissa Municipal Act, 1922. | S. 216, Madras City Municipal Act, 1919. |
| S. 117 (3), Bombay Municipal Boroughs Act, 1925. | S. 176 (3), Madras District Municipal Act, V of 1920. |
| S. 91 (2), Bombay District Municipal Act, III of 1901. | S. 166, Rangoon City Municipal Act, 1922. |
| S. 303, Bombay City Municipal Act, III of 1888. | S. 205, U. P. Municipalities Act, 1916. |
| S. 96, Burma Municipal Act, III of 1898. | |

Directions as to level width, etc.—Urban authorities in England frame bye-laws for enforcing these matters and the judicial authorities on bye-laws framed under corresponding provisions may usefully be consulted as guides. By the **Sunderland Improvement Act, 1885, S. 37**, it shall not be lawful for any person, except with the consent of the corporation, to erect or build, or begin to erect or build, any new building abutting upon any new street or part of a new street, unless the corporation shall have previously approved of the level and available width of such new street or part of a new street nor until the carriageway and footway of such new street, or part of a new street, shall have been

formed to such a level and of such a width and constructed and sewered to the satisfaction of the corporation, in accordance with S. 150* of the Public Health Act, 1875. The appellants, who were builders, gave notice to the corporation of their intention to lay out a certain new street, and the plans for its construction were approved. They subsequently gave notice that they intended to erect four new houses in that street, and the plans for these were also approved. The appellants began to erect these houses abutting upon a part of the new street which had been sewered, paved, flagged, and channelled to the satisfaction of the corporation. The rest of the new street had not been constructed and made good to the satisfaction of the corporation within S. 37 of the local Act. The appellants were summoned for infringing that section, and were fined: *Held*, that the conviction was right, for, as the appellants had given notice to lay out the whole of a new street, the corporation, under the local Act, were entitled to withhold their consent to the erection of any house or building abutting on it until the whole was constructed and sewered to their satisfaction. *Woodhill v. Sunderland (Mayor etc., of)*, (1887), 52 J. P. 5; 57 L. T. 303.

Bye-laws provided: "... (4) Every person who shall lay out a new street shall so lay out such street that the width thereof shall be forty feet at least. ... (6) Every person who shall construct a new street shall provide at one end, at least, of such street an entrance of a width equal to the width of such street, and open from the ground upwards.": *Held*, that the sixth bye-law was *intra vires* and reasonable, and that it prevented a landowner from constructing a new street upon his land until he had provided an entrance to the new street of the specified width, even though the entrance could only be made upon the land of another person over whom he had no control: *Held*, also, that the "construction" of a new street included the building of the houses abutting on it, and, consequently, that the landowner could not, until an adequate entrance had been provided, erect houses abutting on the proposed new street. *Hendon L. B. v. Pounce*, (1889) 42 Ch. D. 602.

In *Bromley L. B. v. Lloyd*, (1892) 56 J. P. 278, 66 L. T. 462, a person desired to construct a new street upon his own land. The proposed entrance to it was a public lane of a width varying from twelve to twenty feet; upon bye-laws similar to those in the last case, *Kekewich, J.*, *held* that the person proposing to construct the new street was under an obligation, before constructing it, to provide an entrance of

* Cf. S. 171 of Punjab Municipal Act.

the width prescribed by the bye-laws, and, further, that the fact that the entrance proposed was a public road did not alter such obligation if that road was of less than the prescribed width; and, he, therefore, granted an *interim* injunction. But when the case was tried before Wills, J., he gave judgment for the defendant on the ground that the entrance required by the bye-law meant merely a practicable way into street: (1893) 9 T. L. R. 306. Where bye-laws required that the entrance to any new street should be thirty-six feet wide at least, the local authority were *held* justified in refusing to pass plans for the construction of a new street showing an entrance less than thirty-six feet wide, consisting of an existing street outside their district. *Barton Regis R. D. C. v. Stevens*, (1896) 61 J. P. 598; 12 T. L. R. 347.

The bye-laws of a local board required that every person laying out a new street should, if it were a principal street, lay it out at least thirty-six feet wide. In 1875 the board approved the plan of an estate showing a street as intended to be laid out thirty-six feet wide. In 1887 the relator built three houses in the street according to the plans approved by the board; and in 1895 he sought an injunction to restrain the defendant Bell from building so as to cause the street to be of less width than thirty-six feet. North, J., refused an injunction because there was nothing to show that this was a "principal" street within the meaning of the bye-laws. *Att.-Gen. v. Pudsey L. B. and Bell*, (1895) 59 J. P. 329.

In the town of Goole certain ways existed communicating with the backs of houses, and used by the authority, (who did the scavenging of the town) for the purpose of obtaining access to privies and ashpits in order to remove the contents thereof. Plans were submitted for approval showing ways, such as above described, of the width of six feet; but the authority, who had made a bye-law prescribing ten feet as the minimum width of "new streets," refused to approve such plans. It was *held*, discharging a rule for a *mandamus* to compel approval, that the ways in question were "passages" within the meaning of S. 4 and, therefore, "streets," within the meaning of that section, and that, therefore, the authority had power by S. 157 (1) to make bye-laws with respect to their width and construction, and the bye-law was valid. *R. v. Goole L. B.* (1891) 2 Q. B. 212; 55 J. P. 535.

The F. Improvement Act incorporated the Towns Improvement Clauses Act, 1847. By S. 69 of the former Act, it was provided that no new street to be thereafter laid out, should be of less width than forty feet, but by the General Act, which came into operation in cases which were not

provided for by any special Act, the extreme width of new streets intended for the use of carriageway was fixed at thirty feet. A street had some years previously to 1873 been laid out with a roadway of twenty-five feet, but the corporation had given notice that they should enforce the clause providing for a width of forty feet. They subsequently upon the application of the defendant, waived that notice and approved carriageway of twenty-five feet. It was *held* that S. 69 was imperative, and that the corporation could not permit a deviation from the Act. It was also *held*, that though the road had been laid out previously, the corporation were not bound to interfere until the building operations were actually commenced and the width of the road definitely fixed. *Att.-Gen. v. Folkestone Corporation* W. N. (1873), p. 127.

S., having an old farmhouse with a shop front abutting on a lane, and other property near, gave notice to the authority of his intention to lay out a street, and submitted a plan which was approved, showing the alteration and proposed width of the new street, which involved the setting back of the shop and garden. He did nothing to carry out the plan, and two months later, put in a new shop front and rebuilt the garden wall on the old site. It was *held* that S had done nothing contrary to the bye-law relating to the width of new streets, for he was entitled to abandon his plans notwithstanding the approval thereof. *Sunderland (Mayor, etc., of) v. Skinner* (1889) 53 J. P. 660.

S. 170-C.—*Cf.* S. 96 of Bombay Act. If after the issue of provisional order no legal order is passed for one month, the applicant is entitled to proceed to lay out the street. He is not bound to wait indefinitely for the issue of legal orders. Any order issued after more than a month will have no force. *Cf.* 13 Bom. L. R. 914, 12 I. C. 551.

uration of
ction.

170-D. Every sanction for the laying out or making of a street which shall be given, or be deemed to have been given by a committee, shall remain in force for one year only from the date of such sanction. Should the laying out or making of the street not have been commenced within the said period of one year, the sanction shall be deemed to have lapsed; but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of this Act.

Explanation.—A street shall be deemed to be made or laid out when it is demarcated on the ground by permanent boundary marks.

Notes.

Analogous Law:—

S. 91 (2), Bombay Act, III of 1901.	S. 167, Behar and Orissa Act, VII of 1922.
S. 206, U. P. Act, II of 1916.	S. 96, Burma Act, III of 1898.

Explanation.—Difficulties noticed in judicial decisions quoted under S. 170-A as to when a new street is made or laid out are greatly obviated by this explanation. Houses may constitute permanent boundary marks.

170-E. Whoever begins, continues or completes the laying out or making of a street without giving the notice required by S. 170-A or in contravention of any written directions made under S. 170-C or of any bye-law or provision of this Act, shall be liable to a fine which may extend to five hundred rupees.

Penalty

Notes.

Analogous Law:—

S. 227, Bengal Municipal Act, XV of 1932.	S. 91, Bombay District Municipal Act, III of 1901.
S. 168, Behar and Orissa Municipal Act, 1922.	S. 176 (5), Madras District Municipal Act, V of 1920.
S. 117 (4), Bombay Municipal Boroughs Act, 1925.	S. 207, U. P. Municipalities Act, 1916.

This section provides the penalty for making or continuing to make new streets without notice or against the terms of sanction under S. 170-C. The penalty provided not only covers cases of breach of provision of Ss. 170-A and 170-C but will cover cases of breach of orders under S. 170-B or breach of any bye-law which the committee may make regulating matters enumerated in S. 170-C as to new streets.

170-F. In any case where the committee considers that any land is being or has been laid out as a street without the notice required by S. 170-A having been given or in contravention of any written direction made by the committee under S. 170-B or of any bye-law or provision of this Act, the committee may, by notice in writing require the owner of the land to alter the street in such manner as it deems necessary.

Notice to owner of land under street

Notes.

This was originally S. 170-G. This S. 170-F has been substituted for S. 170-G. S. 170-B appears to be a mistake for 170-C, under which only the above written directions are possible.

Analogous Law:—

- S. 227, Bengal Municipal Act, XV of 1932.
 S. 169, Behar and Orissa Municipal Act, 1922.
 S. 117 (4), Bombay Municipal Boroughs Act, 1925.
 S. 91 (4), Bombay District Municipal Act, III of 1901.
 S. 304 (2), Bombay City Municipal Act, III of 1888.
 S. 97, Burma Municipal Act, III of 1898.

- S. 316, Calcutta City Municipal Act, III of 1923.
 S. 217, Madras City Municipal Act, 1919.
 S. 177, Madras District Municipal Act, V of 1920.
 S. 167, Rangoon City Municipal Act, 1922.
 S. 208, U. P. Municipalities Act, 1916.
English Law:—
 S. 157, Public Health Act, 1875.

Besides prosecuting people for breach of the provisions of 170-A, and 170-C, etc., the committee can also under this section by notice require the alteration of streets or the demolition of buildings being erected on such streets.

No time is given within which the notice under the section is to be complied with. Notice must, however, give reasonable time for compliance. See S. 214.

Unlike S. 195 no time is fixed for committees within which the notice is to be issued. The committees, however, should not sleep over their rights and duties and prompt action should be taken when the breach comes to their notice.

Power to
require the
closure of
streets and
to declare
such streets
public

171. (1) (a) When the municipal committee consider that in any street other than a public street, or in any part of such street within the municipality, it is necessary, for the public health, convenience or safety, that any work should be done for the levelling, paving, metalling, flagging, channelling, draining, lighting or cleaning thereof, the municipal committee may by written notice require the owner or owners of such street or part thereof, to carry out such work in a manner and within a time to be specified in such notice; and

(b) Should the owner refuse or should he fail to carry out the work within the time specified, the committee may, by written notice, require the owners of the land or buildings fronting, adjoining or abutting upon such street or part thereof to carry out the work in such manner and within such time as may be specified in the notice.

(2) If compliance with the terms of the notice issued under clause (b) of sub-section (1) is not effected within the time specified, the committee may, if it thinks fit, itself execute the work, and may recover under the provisions of Section 81 the expenses incurred in doing so in such proportions as it may deem equitable from the owner of the street and the persons served with a notice under clause (b) of sub-section (1).

(3) After such work has been carried out by the persons served with a notice under clause (b) of sub-section (1) or as provided in sub-section (2) by the committee at the expense of such persons and the owner of the street, the street or part thereof, in which such work has been done, may, and on the requisition of the owner or owners of the major portion of the said street or part thereof, or on the requisition of a majority of the persons served with a notice under clause (b) of sub-section (1), shall be declared by a public notice to be put up therein by the committee to be a public street and shall vest in the committee.

(4) A committee may at any time, by notice fixed up in any street or part thereof not maintainable by the committee, give intimation of their intention to declare the same a public street, and unless within one month next after such notice has been so put up, the owner or any one of several owners of such street or such part of a street lodge objection thereto at the municipal office, the municipal committee may, by notice in writing, put up in such street, or such part, declare the same to be a public street vested in the committee.

(5) This section shall not take effect in any municipality until it has been specially extended thereto by the local Government, of its own motion or at the request of the committee.

Notes.

S. 171 was newly introduced in the Act, III of 1911. The section has now been considerably altered and has been substituted by S. 62 of the Punjab Amendment Act, III of 1933.

The original section is given below and the changes effected can be seen by comparison:—

171. (1) When the municipal committee consider that in any street, not being a public street which has previously been levelled, paved, metalled, channelled, sewered and repaired out of municipal or other public funds or in any part of such street, within the municipality, it is necessary, for the public health, convenience or safety, that any work should be done for the levelling, paving, metalling, flagging, channelling, draining, lighting or cleaning thereof, the municipal committee may by written notice require the respective owners of the lands or buildings, fronting, adjoining or abutting upon such street or part thereof, to carry out such work in a manner and within a time to be specified in such notice.

(2) If such notice is not complied with during the time specified, the committee may, if it thinks fit, execute the work mentioned or referred to therein, and may recover under the provisions of S. 81 the expenses incurred in doing so from the owner in default

according to the frontage of their respective lands or buildings and in such proportion as may be decided by the committee.

(3) After such work has been carried out by such owners or as provided in clause (2) by the municipal committee at the expense of such owners, the street or part thereof in which such work has been done may, and on the joint requisition of a majority of the said owners shall, be declared by a public notice put up therein by the municipal committee, to be public street, and shall vest in the committee.

(4) A municipal committee may, at any time by notice fixed up in any street or part of a street not maintainable by the municipal committee, give intimation of their intention to declare the same a public street, and unless within one month next after such notice has been so put up, the owner or the majority of several owners of such street or such part of a street lodges or lodge objections thereto at the municipal office, the municipal committee may, by notice in writing, put up in such street, or such part, declare the same to be a public street vested in the committee.

(5) This section shall not take effect in any municipality until it has been specially extended thereto by the local Government at the request of the committee.

Changes.— (1) The improvements contemplated can only be required in respect of streets which are not public.

(2) The owners of the street not the owners of abutting houses can be called upon to effect the improvements in the first instance.

(3) On default of owners of the street, the abutting owners can be called upon to carry out the improvements.

(4) If the committee on the failure of the abutting owners carry out the improvements the expenses can be recovered from the owners of the street as well as from the owners of the abutting property.

(5) The word "sewered" has been omitted, as the Act does not observe any distinction between drain and sewer.

Analogous Law:—

Ss. 228-9, Bengal Municipal Act, XV of 1932.

Ss. 170 & 171, Behar and Orissa Municipal Act, 1922.

Ss. 115 & 116, Bombay Municipal Boroughs Act, 1925.

S. 90 (3), Bombay District Municipal Act, III of 1901.

S. 305-6, Bombay City Municipal Act, III of 1888.

S. 98, Burma Municipal Act, III of 1898.

Ss. 317-8, Calcutta City Municipal Act, III of 1923.

Ss. 245-6, Central Provinces Municipal Act, II of 1922.

Ss. 218 & 219, Madras City Municipal Act, 1919.

Ss. 178 & 179, Madras District Municipal Act, V of 1920.

Ss. 168-9, Rangoon City Municipal Act, 1922.

Ss. 212 & 221, U. P. Municipalities Act, 1916.

English Law:—

Ss. 150, 152 & 257, Public Health Act, 1875.

S. 82, Public Health Act, 1925.

Ss. 7 & 20, Private Street Works Act, 1892.

Owners of street.—When under the provisions of Ss. 170-A—170-F, new streets are laid out and plots abutting such streets are sold for building purposes, the original owners must be taken to be the owners of the street. This provision may induce the owner of the lands to be developed into building sites to provide for the sale of the strips of street along with the building site with the object of avoiding their liabilities under the section. If that happens there will be further difficulties; the purchasers will be apt to encroach on the sites intended for streets and committees will find themselves involved in litigation as the purchasers will claim ownership in the land alleged to be encroached. This claim will, however, not succeed if proper steps are taken. If any person encroaching succeeds through court or the mistakes of the committee or its members and officers the whole scheme may be spoiled. Instances of such interferences with lay-outs are not rare.

Public street.—In the old section as it existed before its amendment, improvements as contemplated could be enforced even in the case of public streets—provided such streets had not been hitherto improved in the manner laid down in the section. According to the definition of the term “public street” as now given in the Amendment Act of 1933, such streets cannot be dealt with under S. 171.

New streets sanctioned under S. 170-C will have to be dealt with under this section. Streets other than public which have been hitherto maintained by the frontagers may also be dealt with under S. 171; streets which are only projected streets will appear to be outside the scope of S. 171. *Cf. Healey v. Bailey Corp.*, (1875) L. R. 19 Eq. 375 and *Hall v. Bootle Corp.*, (1881) 44 L. T. 873.

Owners of lands and buildings.—The mere owner of land who has let it out under a building scheme for building purposes, is not the owner of the property within the meaning of this section. In a dispute between the owner of the site and the owner of the building on the site, the latter is the person responsible under the section. *Cf. 34 Bom. 593; 7 I. C. 935.*

Powers under the section continuing.—Unless the street is declared public under clause (3) it would appear that the committee may call upon the owners of a street or the frontagers to do any of the works mentioned in this section from time to time as occasion may require, notwithstanding that such work may have been previously done at the expense of the owners of a street or the frontagers to the satisfaction

of the committee: *Cf. Barry and Cadoxton L. B. v. Parry*, (1895) 2 Q. B. 110. To avoid this the majority of owners should act under S. 171 (3).

Levelling.—It has been held that the power to “level” given by the section only attaches where the particular street requires to be levelled, looking at it as an isolated street. Where, therefore, the local board required the owner of a house to level the part of a street upon which his house fronted, so as to make it on a level with other streets, it was *held* that they could not recover from him the expenses incurred by them in doing the work. *Carey v. Kingstone-upon-Hull L. B.* (1864) 29 J. P. 116.

Widening.—The committees are not empowered to require widening of the street nor can the committee require the owners to maintain the street after the works had been done.

Work for lighting the street—presumably will include only structural works such as pipes, wires or lamps, etc., and not as well as a supply of light.

Written notice, time limit.—The section lays down that the owners are to be called upon to do the work within the time given in the notice. Great care has to be exercised to give sufficiently reasonable time for compliance. The time specified in the notice within which the work shall be completed must be a reasonable time and must take into account the nature and extent of the work and the time which ought fairly and reasonably be allowed for the completion of that work, under all the circumstances. The least time that can fairly and reasonably be allotted for the completion of the work being ascertained, is the least time to be inserted in the notice; there is a discretion to allow further time for the completion of the work, but not to fix any shorter time: *Bristol Corporation v. Sinnot*, (1918) 1 Ch. 62; 82 J. P. 9. In that case a local authority served notice under this section on frontagers of part of a street 1,450 feet long, to sewer, level, pave, etc., the same within one calendar month. The frontagers did not commence the works nor object to the validity of the notice, and after three months the local authority began the works and completed them within four months, and served the frontagers with the usual demand for payment. In an action to recover payment, after an appeal to the Local Government Board, which was later withdrawn and no order made by the Board, it was *held* that the notice was bad in not specifying a reasonable time for the execution of the works and that the local authority could not recover the expenses from the frontagers.

In the *Macclesfield Corp. v. Governors of Free Grammar School* (1921) 2 Ch. 189 Russell, J., expressed the view that the work each frontager is required to do is the work upon that portion of the street upon which his property abuts and that, therefore, in considering the reasonableness of the time regard must be had to the particular work each frontager is required to do. This view was approved by Clauson, J., in *Sunderland Corporation v. Gray* (1928), 91 J. P. 52. But in both cases the court was satisfied on the evidence that the time allowed was adequate even if regard were had to the work upon the whole of the street.

It should also be borne in mind that the notice should be issued to all the owners of lands and houses abutting on the street. No owner will be liable for expenses unless he was served with a notice. Notice must be served on owners who are such at the time of service of the notice. A notice served on an owner who had sold the property at the time of service will not avail against the purchaser: *See Wallsend L. B. v. Murphy*, (1889) 61 L. T. 777. According to a decision of Kekewich, J., the notice must be served on every frontager, and, if it is not, the expenses cannot be recovered even from those who have been served. *Handsworth U. D. C. v. Derrington*, (1897) 2 Ch. 438; 61 J. P. 518.

This dictum was not followed in *Sunderland Corporation v. Gray* (1928), 91 J. P. 52. In that case notices had been served upon all the frontagers except one, and in proceedings for enforcing a charge on premises in respect of which notice had been served, it was held that there is no condition precedent implied in S. 150 that before a charge can be enforced all the frontagers must have been served with notice. The expense of making up that part of the road fronting upon the premises of the person who was not served cannot, however, cannot be apportioned upon the frontagers who have been served and must be borne by the authority: *Cf. Leeds Corporation v. Armitage*. In that case notices were given to all the frontagers save one and the omission was not discovered until work had been begun. The work was then stopped and notice given to the frontager, who did nothing, and the authority completed the work. It was held that he could not be made liable as he had never had the opportunity of doing the work, as the statute required. *Leeds, (Lord Mayor, etc., of) v. Armitage*, (1899) 43 Sol. Jo. 203.

Service of the notice on a person who is *de facto* in receipt of the rent, is a service on the owner sufficient to satisfy the requirements of this section: *Peck v. Waterloo and Seaforth L. B.*, (1863) 33 L. J. M. C. 11; 27 J. P. 807; and *see St. Helens (Mayor of) v. Kirkham*, (1885) 16 Q. B. D. 403 where an

agent for the collection of rents was held to be an owner within the meaning of this section.

In a manner.—The notice must further give full particulars of the various works required from the frontagers and should also indicate how the works are to be carried out.

Where the manner in which the work is to be carried out is not attempted to be specified, the conviction must be set aside. 1924 Bom. 116, 81 I. C. 638.

Sufficiency of notice.—A notice which merely refers in general terms to the provisions of the section and does not give particulars of the work to be done, or mention that plans and sections are deposited for inspection, is not sufficient. *Stourbridge U. D. C. v. Butler and Grove*, (1909) 1 Ch. 87; 73 J. P. 3.

A corporation paved three roads under a local Act and sued the frontagers for the expenses. One road was a "back road" and two were "cross roads" as defined by the Act), but the notice called them all "back roads": *Held*, that the mistake could not have misled the frontagers, and that, therefore, the notice was sufficient. *Blackburn Corporation v. Sanderson*, (1902) I. K. B. 794.

Notice was given to the appellant and five others requiring them to sewer, pave, etc., the parts of a street in front of their premises within a specified time. Five of the owners executed the works, but the appellant made default. The board thereupon did the work, and, the surveyor having made an apportionment, gave her notice accordingly. It was *held* that the board were not bound before executing the work to give the appellant a fresh notice specifying the particular works remaining to be done by her: *Simcox v. Handsworth L. B.*, (1881), 8 Q. B. D. 39. In this case it was argued that the notice was not a separate notice to each owner to do the work opposite his own premises but was a notice to all the owners in respect of the entire work. But Grove, J., in delivering the judgment of the court, said it was not meant that each owner may be called upon to execute the whole. But *see* on the other hand, *Handsworth U. D. C. v. Derrington*, (1897), 2 Ch. 438 and *Lancaster v. Barnes U. D. C.*, (1893), I. Q. B. 855; where Wills, J., said: "The notice is a general one: it is a notice to all the owners collectively to make up the street generally. No one ever saw a notice under S. 150 calling upon each owner to make up that part only which was opposite his own house."

Power to agree with frontagers.—As to the power of an authority to agree with one or more owner to execute the works without observing the formalities required by the section, see *Hall v. Balley, (Corporation of)* (1877) 47 L. J. Q. B. 148. That case was decided with reference to S. 23 requiring construction of drains for houses without effectual drains but the principle laid down in it appears to be equally applicable to this section. Lush, J., said : “It is not permitted to them (the authority) arbitrarily to interfere, and do the work at the owner’s expense without first giving him the opportunity of doing it himself. But if they were to do so he is the only person who could complain. The act requires that work shall be done by the one party or the other, and surely the owner may waive the option given him by the Act if he pleases, and agree with the urban authority that the drain shall be made by them as if the preliminaries had been observed.” And S. 257 evidently contemplates that there are works which may be done by agreement with the owner, so as to make the expenses recoverable from him and a charge on the premises as therein provided.

In *Lewis v. Cardiff Urban Sanitary Authority*, (1878) 47 L. J. M. C. 161, an owner having received notice to pave, indorsed on the notice an authority to the local board to execute the works, and an undertaking to pay the costs on completion. On default of payment after demand the board proceeded to recover the expenses in a summary manner. It was *held* that the owner, having by the submission indorsed on the notice admitted the right of authority to issue such notice, could not require proof before the justices of the fulfilment of the conditions precedent to the existence of such rights. It was *held*, however, that the owner could not by such submission give jurisdiction to the authority if in fact they had none, but that he did thereby waive proof by them of the preliminaries to the notice, and made it incumbent on himself to disprove their original authority if he wished to dispute it. It was, therefore, open to him to show that the street was a highway repairable by the inhabitants at large.

Clause (2).—Recovery of expenses under S. 81. Statutory remedy is exclusive.—Where a statute provides a particular method of recovering such expenses, an action will not lie, the remedy given by the statute being exclusive: *St. Pancras (Vestry of) v. Batterbury*, (1857), 21 J. P. 424 ; and see *Lamplugh v. Norton*, (1889), 22 Q. B. D. 452.

This section does not create the relationship of debtor and creditor between an owner and the authority. The only means of recovering the expenses are those provided by the Act. Therefore a summons for leave to prove in an administration action for the amount awarded was dismissed in *West v. Downman*, (1880), 14 Ch. D. 111.

Summary proceedings having been taken against an owner for payment of his proportion of expenses, justices ordered him in default of distress to be imprisoned with hard labour. As they had no power to do so, quarter sessions on appeal quashed the order without going into the merits. Afterwards the authority obtained a new order to pay the same amount. It was *held* that the justices had jurisdiction to make the new order, the former having been quashed as null and avoid. *Lister v. Hedden L. B.*, (1878), 42 J. P. 119.

Orders having been obtained by a local board against A and L for payment of paving expenses under this section, it was agreed that the order against L should not be enforced for three months, in order to enable a case to be stated on a point of law. At the same time an understanding was come to that the order against A should abide the decision in L's case. L, instead of taking his case to the Queen's Bench, went before quarter sessions, and the order against him was quashed on a technical ground: (*See Lister v. Hedden L. B.*, *supra*). A was not informed of the course taken by L, and the three months having expired within which she should have appealed, the local board obtained a distress warrant against her to enforce payment. On motion by A to restrain the board from enforcing payment until she had had an opportunity of stating a case for the opinion of the Court of Queen's Bench, it was *held* that the court had power to restrain the board, and on A undertaking to consent to a case and to pay the money into court, the injunction was granted. *Ashworth v. Hedden Bridge L. B.*, (1877) 47 L. J. Ch. 195; 37 L. T. 496.

Fronting, adjoining or abutting.—There can be no liability under this section if intervening land of a third person precludes possibility of access to the street; but, if there be no intervening strip, the fact that the street is private (and therefore cannot be used as of right unless or until it becomes a highway) appears to afford no defence. *Walthamstow U. D. C. v. Sandell*, (1904) 68 J. P. 509; *Moubray Rowan and Hicks v. Drew*, (1893) A. C. 295. Paving expenses must be apportioned among all the owners of premises fronting, adjoining, or abutting on the street in proportion to the

frontage, without any reference to direct or consequential benefit, which the Act assumes to be proportioned to the frontage. Therefore, a railway and canal company whose premises lay along one side of a street were held liable to pay their proportion of the expenses, although they had no immediate access to the street: *R. v. Newport L. B.*, (1863) 3 B. S. 341. So, too, the owner of ground at the end of a street forming a *cul-de-sac* was held liable under a local Act to pay the expenses of paving, notwithstanding that a wall divided his property from the street, which wall, however, he might at any time have removed wholly or partially so as to open access to the street. *Manchester (Mayor, etc., of) v. Chapman*, (1868) 37 L. J. M. C. 173; 32 J. P. 582. In another case, premises facing W street were divided from D street by a small stream, but were connected with it by two bridges over the stream. All communication with the street could be closed by gates. One of the bridges had been moved and reinstated by the owner of the premises. It was held that the premises fronted, adjoined, or abutted on D street. *Wakefield L. B. v. Lee*, (1876) 1 Ex. D. 336; 41 J. P. 54.

An owner of premises abutting on a *cul-de-sac* passage was held liable to pay his apportioned share of the costs incurred in making it up, although he had at the time no door into the passage from his premises. *Walthamstow U. D. C. v. Sandell*, (1904) 68 J. P. 509; 2 L. G. R. 835.

B owned a house which had its front and only entrance in F street, and behind it a garden with a dead wall at the further end. A new street was made parallel to F street, alongside the dead wall at the end of B's garden. It was held that B's land abutted on this new street: *Paddington (Vestry of) v. Bramwell*, (1880) 44 J. P. 815. A owned three houses facing Y place, and abutting at the rear upon a footpath at the end of a *cul-de-sac* called St. J street. The ground at the back of these houses was five feet above the level of St. J street and the wall, which was A's property was above twelve feet high on the outside. There was no access from the premises to St. J street. It was held that his premises adjoined or abutted on St. J street within this section. *Newport Sanitary Authority v. Graham*, (1882), 9 Q. B. D. 183; 47 J. P. 133. Cave, J., said: "If it had been shown that the wall at the end of St. J street did not belong to the respondent, or that a strip of land intervened between his premises and the street, they would not have been adjoining or abutting."

Expenses.—The committee cannot relieve the frontagers of their liability. *Dryden v. Putney (Overseers of)*, (1876), 1 Ex. D. 223. Expenses will not cover incidental expenses,

such as cost of serving of notice or advertisement expenses. Office or supervision charges also could not be included. *Hamwell U. D. C. and Smith, In re* (1904) 68 J. P. 496.

Appeal.—Notice under S. 171 is appealable.

Jurisdiction of Civil Courts.—The court cannot entertain any question as to whether the work was necessary or proper under the circumstances, that being for the local authority to decide: *Bayley v. Wilkinson*, (1864) 16 C. B. (N. S.) 160; *Cook v. Ipswich L. B.*, (1871) L. R. 6 Q. B. 451; 35 J. P. 565. They may, however, inquire into the original liability of the persons charged; for example, they may, and ought to, decide whether the street is, or is not, public: *Hesketh v. Atherton L. B.*, (1873) L. R. 6 Q. B. 4; *Lewis v. Cardiff Urban Sanitary Authority, supra*. An objection that a street (*i.e.*, the street is repairable by municipal committee or Government) is a highway repairable by the inhabitants at large may properly be raised in proceedings to enforce payment.

The justices cannot inquire into the reasonableness of the expenditure or whether it has been incurred in point of fact. Nor is it a good objection before justices that the notices required the street to be paved in a particular way, that the plans differed from the notice, and the work done from both. These are only matters of appeal to the Ministry of Health under S. 168: *Cook v. Ipswich L. B.*, (1871), L. R. 6 Q. B. 451; 35 J. P. 565. It has been *held* by the House of Lords that the omission strictly to follow the terms of their own notice does not prevent the authority from recovering from the owner his proportion of the expenses incurred: *Acton L. B. v. Lewsey*, (1886) 11 App. Cas. 93; 50 J. P. 708. In that case the notice required the owner to pave part of a street, specifying the materials and mode, and (*inter alia*) requiring him to lay down concrete. The owner having made default, the local authority did his work, but, finding that the concrete would be an unnecessary expense, omitted it.

An authority gave notice to K, an owner of land adjoining a new street, to sewer the road, and lay an eighteen-inch pipe. Whilst carrying on the work upon his default they found a twelve-inch pipe sufficient, and used it, and thus saved expenses to K on the apportionment. It was *held* that the magistrate was right in holding that apportioned expenses of the altered work were recoverable, the alteration not being a material matter nor invalidating the notice: *Kershaw v. Sheffield (Corporation of)*, (1887) 51 J. P. 759. An authority served notices on frontagers requiring them to sewer a street as therein specified. On default the authority carried out more extensive sewage works, but including the

work necessary for drainage of the street itself, and apportioned on the frontagers part of the cost of the more extensive works, being the amount which it would have cost to sewer the street in accordance with the notices. It was *held* that the amount as apportioned was recoverable. *Acton U. D. C. v. Watts*, (1903) 67 J. P. 400; 1 L. G. R. 594.

Owners in default.—Expenses under S. 150 cannot be recovered from one who, though the owner of premises when notice was first given by the authority, has ceased to be owner before the completion of the works (*R. v. Swindon L. B.* [1879], 4 Q. B. D. 305; 43 J. P. 431). "I cannot think it was ever intended by the legislature that when the owner has parted with his property, and somebody else is in possession of it, and therefore, getting the benefit of the work done, and who ought, therefore, to pay the expenses incurred it should be competent for the local authority to follow him up wherever he may have gone and hold him personally liable. I think that defect is remedied by S. 257, which treats owners upon whom notice was originally served and who are owners at the time the work is completed, and the expenses demanded, as the persons upon whom the local board shall be able to come for the expenses" (per Cockburn, L. C. J.). These words were explained by North, J., in *re Bettsworth and Richer's Contract* (1888), 37 Ch. D. 535; 52 J. P. 740. He pointed out that in *R. v. Swindon L. B.* the same person was owner, both when the work was completed and when the demand was made. But he *held* that when there was a change of ownership after the completion of the works and before demand, the liability was upon the person who was owner when the works were completed. In that case leasehold houses in an urban district, abutting partly on a private road, were sold on an open contract. At the date of sale, works had been done by the local board under this section. The final demand for payment of the sum apportioned in respect of the premises was served after the purchase ought to have been completed. It was *held* that the apportioned expenses became a charge on the premises at the date of the completion of the works, and as between the vendor and purchaser they were payable by the vendor. Compare with this decision *Egg. v. Blayney* (1888), 21 Q.B.D. 107; 52 J. P. 517, as a case as to the expenses of paving a street in the metropolis, where such expenses are not a charge on the premises.

The dictum of Cockburn, L. C. J., in the *Swindon Case*, *supra*, was at length expressly disapproved by the Court of Appeal in *Millard v. Balby-with-Hexthorpe U. D. C.*, (1905), 1 K. B. 60; 69 J. P. 13. There the appellant was the owner of certain premises in June, 1899, and as such had served upon

him a notice under S. 150. The respondents, upon his default, executed the work, which was completed in December, 1901. Formal notice of the apportionment was served on the appellant in November, 1902, and on May 20th, 1903, a demand for payment was served upon him. In April, 1902, he had ceased to be the owner of the premises. It was *held* that as he was the owner of the premises when the works were completed, he was liable to pay the amount apportioned in respect thereof. In a later case it was *held* that a person who was the owner of premises at the date of the completion of the work was liable, although he was not the owner of premises when the notice requiring the works to be executed was served and although he had ceased to be owner prior to service of notice of apportionment and demand for payment: *East Ham U D. C. v. Aylett*, (1905) 2 K. B. 22; 69 J. P. 205. In *re Lewis* (1908), 42 Ir. L. T. 210, compensation was allowed to a purchaser in respect of an outstanding sanitary notice not disclosed to him.

Apportionment.—An apportionment was made and notice given to an owner that his proportion was £ 20 2s. In answer to a summons for payment, he objected that the apportionment was bad, on the ground that the expenses of two streets had been lumped together, and the aggregate amount divided among the owners in the two streets; and the justices dismissed the complaint on that ground. The surveyor then made a fresh apportionment, and a notice was served on the owner that his proportion was £19 11s. He gave notice that he disputed the apportionment, and the matter came before justices under a section corresponding to S. 81 of the Punjab Act. On a case stated, it was *held* that the first apportionment was a nullity and that the surveyor, not being *functus officio*, was right in making a fresh apportionment: *Cook v. Ipswich L. B.* (1871), L. B. 6 Q. B. 451. An apportionment was signed by B, who was not then surveyor, having been superseded previously. The authority on discovering the mistake treated it as nullity, and issued a fresh apportionment signed by their actual surveyor. It was *held* that they had acted properly: *Sykes v. Huddersfield (Mayor, etc. of)* (1871), 35 J. P. 614. Where a local Act required the proportion in which expenses were to be apportioned to be ascertained and settled by the corporation, it was *held* that the fact that the apportionment had been corrected by their surveyor after it had been approved by them did not invalidate it: *St. Helen's (Corporation of) v. Riley*, (1883), 47 J. P. 471. An authority acting under this section served the defendant and other frontagers with notices requiring them to execute works including certain work which could not be legally included in such notices. The notices not

being complied with, the authority did the works, and apportioned the expenses among the frontagers. A summons to recover from the defendant £ 600, the amount charged to him, having been dismissed by the magistrates, the authority made a second apportionment, excluding the expenses of the work which had been wrongly included, the amount charged to the defendant therein being £ 579. They then brought an action under S. 257 to establish a charge on the defendant's premises for £ 579, or in the alternative for £ 650: *Held*, that the authority had power to make a second apportionment, and that, notwithstanding the dismissal of the summons, they were entitled to a charge for £ 579: *Manchester (Mayor of) v. Hampson*, (1886), 35 W. R. 334. See also as to the jurisdiction to make a second apportionment, *Bishop v. Wandsworth District Board*, (1900), 69 L. J. Q. B. 632; 64 J. P. 630; *Elsdon v. Hampstead Borough Council*, (1905), 2 Ch. p. 633; 60 J. P. 434. The decision in *Cook v. Ipswich L. B.*, was considered in *Shanklin L. B. v. Millar*, (1880), 5 C. P. D. 272; 44 J. P. 635. In that case apportionment was made in respect of five roads. The defendant had taken no steps to dispute the apportionment, and when proceedings against him were instituted in the county court he contended that the apportionment was bad in law. On a case stated, the High Court *held* that the defendant was liable. Denman, J., referring to the former decision, said that it was not intended to decide "that an apportionment which is otherwise good on the face of it, is necessarily a nullity and may be treated as such in any court before which it come, because two streets instead of one are included in the apportionment, the former one becomes a nullity in the sense that it cannot be enforced, and is useless for particular purposes and cannot stand in the way of a good apportionment. That is, to my mind, the full extent of the decision, and it is not a decision that, if no steps are taken to set aside or dispute the apportionment on the ground that the party charged is not liable, it may be treated as a nullity when it comes before the court." See also *Ex-parte Wake; R. v. Recorder of Sheffield*, (1883) 47 J. P. 504 and *Derby (Mayor, etc. of) v. Grudgings*, (1894) 2 Q. B. 495 for discussions of *Cook v. Ipswich L. B.* It appears from these cases that an apportionment, if made in respect of the paving, etc., of more than one street, may be objected to under S. 257* of Public Health Act: but that, if this is not done, the owner is liable for the amount apportioned.

* Cf. Ss. 81 and 222 of the Punjab Act.

Two or more houses or plots belonging to one owner must not be grouped together in the apportionment, a share of the cost must be apportioned on each separately. *Croydon R. D. C. v. Betts*, (1914), 1 Ch. 870.

Street.—An open space owned by the accused but accessible to the occupiers of other houses in the same *dehal* is a street. "All other persons" would mean persons other than the occupier of such buildings, and would not mean all occupiers of all the buildings within that space.

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172. (1) Whoever without the written permission of the committee makes any immovable encroachment on or under any street, on, over or under any sewer, or watercourse, or erects or re-erects any immovable overhanging structure projecting into a street at any point above the said ground level, shall be punishable with a fine which may extend to fifty rupees.

(2) The committee may, by notice, require the owner or occupier of any building to remove or alter, within a specified time not exceeding six weeks, such immovable encroachment or overhanging structure as aforesaid, and no compensation shall be claimable in respect of such removal or alteration:

Provided that if a period of more than three years has elapsed from the completion of the encroachment or overhanging structure, no prosecution shall lie under sub-section (1); nor shall such encroachment or overhanging structure be required to be removed or altered without payment of reasonable compensation.

Notes.

This section corresponds somewhat to part of S. 95 of the old Act. S. 95 had been split up into Ss. 172 and 175, and considerably altered. S. 63 of the Punjab Amendment Act, III of 1938, has substituted this section for S. 172 of Act III of 1911.

Changes.—Immovable encroachments under streets, drains and water courses have been made punishable. Period of notice has been specified within certain limits. Re-erecting of overhanging structures has also been made punishable.

The word "makes" for the word "builds" has been substituted, as a more suitable word.

Analogous Law:—

Ss 202 & 204, Bengal District Municipal Act, 1884.

Ss. 235, 236 & 241, Bengal Municipal Act, XV of 1932.

Ss. 179, 180, 196, 197 & 203, Behar and Orissa Municipal Act, 1922.

S. 143, Bombay Municipal Boroughs Act, 1925.

Ss. 113 & 122, Bombay District Municipal Act, III of 1901.

Ss. 229-A, 257 (a) (i), 258, 308, 310, 312, 314, Bombay City Municipal Act, III of 1888.

Ss. 287 & 299, Calcutta City Municipal Act, III of 1923.

S. 187, Cantonment Act, II of 1924.

S. 93, Central Provinces Municipal Act, II of 1922

Ss. 220, 222 & 223, Madras City Municipal Act, 1919.

Ss. 180, 182 (1) & 183, Madras District Municipal Act, V of 1920

S. 163, Rangoon City Municipal Act, 1922.

Ss. 209, 210 & 211, U P. Municipalities Act, 1919.

Executive Officers Act.—The powers conferred upon the committees under sub-section (2) of this section shall not be exercised by the committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Comments.—Ss. 172 and 173 allow encroachments on streets which otherwise would constitute an offence. It would appear that powers of the committee to control encroachments on streets are limited and whatever powers the committees do possess under the Act are not exercised with due regard to public convenience and safety.

While powers of committees to deal with overhanging immovable structures have been increased in certain respects the powers with regard to all other encroachments under S. 172 have been considerably curtailed. After three years these cannot be removed without payment of compensation, if made or erected without or against sanction before three years. In the present state of municipal administration in big municipalities it is not difficult to escape detection for three years.

Projections and encroachments in streets.—The inveterate habit of house-owners to encroach upon streets by erecting steps, *tharas* and the like is well known. In fact, it is only in respect of obstructions in streets that there have been a lot of friction between persons owning houses within the municipal limits and the municipal corporations concerned. Being trustees for the public in respect of the public streets within their local limits, they are bound to take all necessary steps to see that the entire width of the street and such space above the surface as the public use demands are always available for the benefit of the public. The public right goes to the full width of the street and extends indefinitely upward

and downward so far at least as to prohibit encroachments upon the said limits by any person by any means by which the enjoyment of the said public right is or may be in any manner hindered or obstructed or made inconvenient or dangerous.

The way in which powers under this section are used cannot be said to be very creditable to municipal administration of some of the municipalities in the Punjab. For one encroachment built with the proper sanction there are ten insidiously built without sanction. Existing encroachments are imperceptibly and by degrees enlarged without exciting the notice of municipal staff, while committees by sanctioning shops which are mere niches in walls greatly encourage these various forms of obstructions. Powers of committees have to be curtailed in some respects and enlarged in others if streets are to be properly maintained in public interests.

The principle that streets and public places or the uses thereof speaking generally, belong to the public is one of great importance. Because they are public, whether the technical fee be in the adjoining owner or in the original proprietor or in the municipality in trust for public use, any unauthorised obstruction of the public enjoyment is a criminal offence. It is a diversion of the streets to a private use to use them for deposit of merchandise or for construction of *tharas* or projections. However, the use of streets in towns for the erection of certain conveniences in connection with abutting premises is also recognised. S. 172, in allowing the erection of encroachments and projections with the consent of municipal authorities, may be taken as recognition of that principle. Similarly other temporary and necessary obstructions are also recognised. See Notes under S. 173.

Applicability of the section.—Though underground structures such as vaults, cellars, etc., under streets were not known in this country, any body building without breaking the street or causing subsidence such a structure under the street ground without committee's permission could not be proceeded against under S. 172, as it stood before its amendment in 1933. The section is inapplicable to a structure which had been built with the permission of the committee although the structure may be on a public thoroughfare and therefore it does not entitle the committee to take steps for its removal by a summary notice under the section. P. R. No. 11 of 1904 Cr.

Immovable encroachments under streets, drains or water courses have now been brought under control. Petrol

pumps and other similar structures underground will have to be made with the previous sanction of the committees.

The provision in S. 202, Bengal Act, 1884 (corresponding to S. 172 in some respects) cannot be invoked when the encroachment is not on the street, sewer or drain: when there is a dispute of title as regards the property under the encroachment the proper course is to seek the help of civil court: 59 I. C. 137; 22 Cr. L. J. 25. A municipal committee has full powers to withhold permission for the building of a structure that will project over a street, and a civil court has no jurisdiction to interfere in such a matter. S. 193 of the Punjab Municipal Act refers to buildings to be erected on private property only and has no application to a structure that projects over a street. 63 I. C. 675; (1922) Lah. 41.

Whoever.—The person actually erecting or making the encroachment is liable to punishment. What is made criminally punishable is the act of making an encroachment. The section cannot reasonably be construed as making punishable an existing encroachment not made by the accused person. Clause (2) provides full means of redress in the case of an encroachment not made by the accused. 47 I. C. 879.

The words “makes or erects” apply to the person who built or caused to be built the encroachment and not the person who had nothing to do with the erection of the encroachment. S. 172 cannot be interpreted as making punishable an omission to remove an existing encroachment not made by the accused. Such cases should be dealt with under S. 172 (2) or 175. 65 I. C. 559.

A shopkeeper affixed to his shop a board which projected into the street. The shop was divided into two portions, one of them was occupied by the shopkeeper himself and the other was let by him to a tenant. The shopkeeper cannot be said to have committed two distinct offences. 4 Bom. L. R. 942.

Where a lessee builds an encroachment, he will be liable under S. 172: *Cf.* 2 C. L. J. 226. He must be the owner or the occupier of any premises which cause the obstruction or encroachment.

Where the accused had before the date of the notice created a trust in favour of the whole community in respect of a temple and divested himself of all interest in it, the fact that he constructed the compound wall would not be sufficient to make him an owner. The mere fact that he was the treasurer of some fund of the community would not make him a trustee of the temple or bring him within the meaning

of the term 'owner' as used in the Act. *Cf.* 51 Mad. 524; 1928 Mad. 485.

Encroachment.—An encroachment is an unlawful gaining upon the right or possession of another man. In case of public streets the right to the soil ordinarily rests with the owner of the land adjoining the road. But the public have an extended right of user in the street for the protection and control of which local authorities were created. A hanging verandah, therefore, would be an encroachment if it amounted to an unlawful gaining upon the right of user by the public. The question whether a hanging verandah amounts to an encroachment would depend in each case upon the question whether in the particular circumstances it constitutes an invasion of the public right of user as described above. The public have a right of user not merely on the roadway but also on the side lands attached to the road. 22 I. C. 763.

A person who has without objection on the part of a municipality encroached over the surface of a municipal street by a projection, has no right to run up the projection to any height he likes, even though he does not thereby make any further encroachment in breadth over the street. 47 I. C. 306.

Burden of Proof.—It is for the committee to prove that the erection or verandah encroaches on the street. No inference can be drawn from the mere fact that the erection is beyond the main wall of the house. 8 Mad. 64, 9 Ind. Jur. 71.

Makes or erects.—Under a somewhat similar provision of Bengal Act, IV of 1884, it was contended by the municipality that the section applied to the re-erection of an old projection though such a re-erection be in substitution of an old projection which had existed upon the site. The contention of the municipality was overruled and it was *held* that the section only applied to projection erected for the first time. 25 Cal. 160.

Following the above ruling it was *held* by Bombay High Court that when an encroachment is lawfully in existence then its re-erection after a temporary removal is not erection within the meaning of the section. 23 Bom. 248.

To renew the old posts of a *chhapri* and then to put back the roof in its old position is not such a building or erection as is contemplated by the section. *Cf.* 6 I. C. 431.

The mere substitution of new bricks for old ones in a platform on the ground does not constitute anything more than repairs to such platform. 19 I. C. 781

S. 172 is only applicable to encroachments or overhanging structures recently built or newly built without permission. The use of the present tense supports this view: the section cannot govern structures erected some years ago. These will be governed by S. 175. Penal sections of the Act must be construed strictly and with due regard to the ordinary meaning of the term. 2 P. R. 1915 Cr. ; 28 I. C. 734.

Re-erection of projections or *tharas*.—S. 172 must be restricted to newly built structures and has no applicability to cases in which an old projection has been demolished and substituted by a new one. 1927 Lah. 276: 28 P. L. R. 205; 101 I. C. 747.

Interpretation of Statutes.—It is not the function of a court to read into an enactment words that are not there. The courts are to construe its provisions according to their plain meaning and not to supply the deficiencies of the legislature.

Strict construction must be placed upon a penal enactment.

In construing such an enactment no case must be held to fall within it which does not come both within the reasonable meaning of its terms as well as within its spirit and scope.

If the legislature has not used words sufficiently comprehensive to include within its prohibition all the cases which fall within the mischief intended to be prevented it is not competent to a court to extend them. 1927 Lah. 276, 101 I. C. 747; 28 P. L. R. 205.

It was also contended in this case that the word re-erect was an omission in S. 172 and that the word erect and re-erect are synonymous. This contention was not upheld.

S. 172 was not intended to give the municipal committee anything more than absolute power of refusal or grant of an application made under the section. It cannot, therefore, grant such permission subject to any conditions such as payment of rent by the applicant. Imposition of a condition of payment of rent is, therefore, *ultra vires* under S. 172, without framing bye-laws under S. 188 (u). 1929 Lah. 701.

S. 172 only applies to cases where an encroachment has recently been made by a person on a public street, etc., without the written permission of the municipal committee. Where, therefore, there is a finding that no encroachment is made by that person recently, the notice under 172 is illegal. 1931 Lah. 79 (1), 31 P. L. R. 951, 131 I. C. 221.

Old encroachment.—Municipal committee is not competent to issue notices under S. 172 in respect of encroachments which were made about twenty years ago 1926 Lah. 547 (1), 97 I. C. 288.

N. B.—Now no notice can issue for encroachments three years old and such encroachments can only be removed on payment of compensation. S. 173 (1) does not apply to a structure overhanging a street.

Re-erects overhanging structure.—So far as immovable overhanging structures are concerned, the law has been changed—now not only erection of such a structure without permission is an offence but its re-erection also. The rulings quoted above are no longer good law so far as overhanging structures are concerned but the re-erection of *tharas* or other immovable encroachments on a street or drain or under the street or drain will not be an offence and no permission for their re-erection is necessary as the law exists at present.

Distinction between Sections 172 and 193.—S. 193 refers to buildings to be erected on private property and S. 172 to buildings which encroach or project into or over a street, etc. Structures under S. 172 require the previous written permission of the committee. P. R. 62 of 1907.

Structure.—Structure means a structure of some permanent character. The fixing of portable plank over a public drain cannot be regarded as erection of a structure under the section. Cf. 39 All. 386; 40 I. C. 317.

Projection.—A verandah attached to and projecting from a house and supported on pillars sunk down into the soil between a street and a drain which runs between the street and the front of the house is a “fixtured” and a projection, encroachment or obstruction over or on a public street. Cf. 34 Cal. 844.

A sunshade overhanging such a drain is a projection which can be ordered to be removed under S. 172. 30 I. C. 683.

Imposition of conditions when sanctioning encroachments *ultra vires*.—The plaintiffs having applied to the municipal committee for permission to roof over the drain in front of their gates, the municipal committee by a resolution passed more than five months after the date of the application, agreed to allow the drain to be roofed provided that the plaintiffs executed an agreement disclaiming all title to a piece of land between the drain and their compound wall. The plaintiffs in the meanwhile had roofed the drain and as they did not execute the agreement relinquishing their

right to the said land the municipal committee issued a notice to them to remove the roofing over the drain; the plaintiffs sued for injunction to restrain the threatened demolition and justified their acts under clause 5 of S. 92 (S. 193 proviso of the Act of 1911) inasmuch as the committee had neglected to pass orders on their application within six weeks:

Held, that S. 92 was not applicable to the case, for though the bridging of the drain came within the meaning of erection of a building in S. 92 that section is governed in the matter of building over a drain by S. 95 (= S. 172 of the present Act) and so the written permission of the municipal committee was necessary;

But *held* further, that the imposed condition was *ultra vires* and that the plaintiffs were entitled to the injunction. The municipal committee while acknowledging that there was no objection to the erection was not empowered to compel the applicant to do something quite foreign to the object of the application and to the purpose and object for which the power of sanction was given. P. R. 27 of 1901.

S. 172 does not contemplate that a permission once given by the municipal committee should be withdrawn after a term of years, where a person obtained permission to build a bridge over a drain on executing an agreement to the effect that he would after ten years demolish the bridge or obtain fresh sanction to maintain it, and after expiry of ten years the committee issued a notice under S. 172: *Held* the notice was *ultra vires*, the circumstances did not fall within the purview of S. 172 and the municipality should be restrained from taking action under S. 172.

The question what was the effect of the agreement was left undecided. 51 I. C. 831.

S. 170 (3) (1) does not apply to a permanent structure like a verandah which a person builds in his house and does not therefore justify the committee in granting permission to make it conditional on payment of rent and imposition of other limitations.

The committee has no power to put restrictions upon the permission granted by it under S. 172.

It has power to refuse permission but if it once grants the same, it cannot put any restrictions or limitations upon it. Where therefore the committee grants permission to build a verandah in front of a person's house imposing conditions as regards payment of rent and removal of struc-

ture in future in case the committee so required, such conditions are *ultra vires* in the absence of a bye-law framed under S. 188 conferring those powers on the committee. 1930 Lah. 246; 11 Lah. 276.

Note.—The above decision and the decision reported in 1929 Lah. 701 must be taken to be applicable to the particular facts of the case decided. It only decides that in the absence of bye-laws under S. 188 empowering committees to charge rent for structures under S. 172 the committees have no power to make the sanction under S. 172 subject to payment of rent. The committees certainly have power to impose such conditions as are within their powers given by the Act. That there is no middle course between absolute sanction or absolute rejection is not the meaning of the ruling. Conditions as regards sanitation etc., can certainly be imposed in the interests of public safety and convenience.

Acceptance of conditions of grant of permission under Section 172.—The municipal committee sanctioned the construction of a building the scheme of which involved an encroachment on the street; professing to act under S. 172 the municipality imposed a condition with regard to the proposed encroachment, that the applicant was to enter into an agreement to pay certain rent to the municipality. The applicant entered into such agreement and the municipal committee sued him for recovery of rent:

Held, that the case was governed by the agreement between the parties which was neither illegal nor without consideration. 32 P. L. R. 607, 132 I. C. 696; 1931 Lah. 634.

Construction of the powers under the section. Projecting eaves causing no practical inconvenience.—The eaves of certain buildings belonging to the plaintiff projected over the public road. The municipal commissioners of Bombay gave notice to the plaintiff requiring him within thirty days to remove the said eaves as being “a projection, encroachment or obstruction” within the meaning of S. 195 of Acts III of 1872 and IV of 1878. The plaintiff thereupon filed this suit praying for an injunction against the municipal commissioners. The eaves in question projected to the extent of one foot eight inches. The width of the road in front of the buildings was about forty feet, and the length of the eaves varied from seven feet to nine feet two inches above the roadway. At the time this suit was filed there was an open drain or gutter one foot three inches wide running along by the side of the plaintiff’s buildings and between them and the road. The gutter, however, subsequent to the filing of the suit but before the hearing, was covered over and so much additional width was thereby added to the road: **Held** that the eaves constituted an obstruction within the meaning of the above section and that the municipal

commissioner was entitled to remove them. Sergeant, C. J., in the course of his judgment remarked: "Under the above section the question to be decided is not whether there is a real practical inconvenience to the public traffic on the street. Those are not the words used in the section, and if that was the intention of the legislature it would have been expressed. The words in their plain and obvious meaning import 'passage along the whole of the street.'

"We think therefore that upon the proper construction of S. 195, the question to be considered is merely whether the eaves were an obstruction, and as to this it is not denied they are an obstruction to the convenient passage along that part of the street. * * *

They of course prevent loaded carts from passing as near to the wall of the plaintiff's house as it would be possible for them to do if the eaves were not there. It is no doubt a well recognized general rule that where powers are given by the legislature to interfere with private property these powers are to be exercised strictly and exclusively for the purposes and objects for which they are given, and unless it can be shown that such interference is necessary for the furtherance of these objects it will not be permitted. That is the general rule which is applied in the case of railway and other companies authorized to take compulsorily the lands of others.

But in applying the rule, the powers conferred on municipalities and corporations for the purpose of making improvements in large towns or doing other similar acts for the public benefit have always been liberally construed. 12 Bom. 474.

In the Punjab Municipal Act there are two sections, 172 and 195, under which a municipality may order the removal of a building or a portion of a building. S. 172 is concerned with projections or structures overhanging, projecting into or encroaching upon the street and S. 195 with new buildings.

The powers given by the Act to municipal committees are an interference for the public good with the ordinary rights and privileges of the public, and, therefore the law should be very strictly construed against committees. If a committee wishes to exercise these extraordinary powers, it must do so strictly in accordance with law and procedure, and if a committee directs a person to remove a building on the ground that it has recently been built without permission that person is not bound to remove the building which it has been proved was not built recently, merely on the ground

that it is on a public street and would be quite justified in asking a court to decide whether the notice actually served on him stated the facts correctly and gave sound reasons for the removal of the building concerned. This of course does not mean that the courts will interfere with the discretion of the committee lawfully exercised. 9 I. C. 889, P. R. 56 of 1911.

Where the applicant has obtained a decree in his favour declaring that the site was his private property but the municipality prosecuted him for building on that property: *held* the prosecution is wrong 1925 Lah. 238, 84 I. C. 718.

Where the accused applies for and obtains sanction to erect a *chabutra* in front of his house he cannot be prosecuted for having built a *chabutra* resting on stones specially when there is nothing in the sanction to forbid the use of stones. 48 All. 230; 1926 All. 122.

Powers of Civil Courts to interfere.—Plaintiff proposed to make a balcony projecting over a public road. The municipality objected to the work as an encroachment on a public street. He therefore sued the municipality to establish his right to build the proposed balcony: *Held* that so far as the column of space standing over the street was vested in the municipality the plaintiff had no right to occupy it with a balcony, which by intercepting light and air would greatly impair the use of the area as a street. S. 33 of the Bombay District Municipal Act (VI of 1873) gives the municipality a discretion to issue such orders as it thinks proper with reference to a proposed building. Civil courts cannot interfere with that discretion unless it is exercised in a capricious, wanton and oppressive manner. 12 Bom. 490.

A municipal committee has full powers to withhold permission for the building of a structure that will project over a street and a civil court has no jurisdiction to interfere in such a matter. S. 193 of the Punjab Municipal Act refer to only buildings to be erected on private property and has no application to a structure that projects over a street. 68 I. C. 675.

Constructions not within the section.—The section does not empower a municipality to prevent a person dealing with his own property provided he does not interfere with the convenience of the public or with any sanitary regulation. 15 Mad. 292.

As the street as defined in S. 3 extends only to the boundaries of adjacent property, verandahs or other structures erected within the limits of the adjacent property require no written permission under S. 172. *Cf.* 31 Mad. 181.

Where walls sought to be demolished by the municipality do not overhang, project into, or encroach upon any street, a notice for the demolition of the said walls issued by the municipality is not justified by the provision of S. 88* of the N. W. P. and Oudh Act, I of 1900. 4 All. L. J. 204.

Public nuisance.—An encroachment by a private person building over a part of a public street is a public nuisance within the meaning of S. 268, I. P. C. Injury to any particular individual need not be proved. The public are entitled to the use of the full width of the public street however wide it may be. Whoever builds over a portion of a public street does an act which must necessarily cause obstruction to persons who may have occasion to exercise their rights of using the portion encroached upon. It is no answer to say that the street is still wide enough for all comers. Each and every part of a public street is open to lawful use by the public, and it is the duty of the public authorities to prevent encroachment thereon by private persons. 7 Mad. L. J. 95.

Whoever appropriates any part of a street by building over it, infringes the right of the public *quod* the part built over and thereby commits an offence punishable under Penal Code, S. 290 if not punishable under S. 283. 20 Mad. 433.

Placing a *charpoy* on the road in the bazaar temporarily, does not amount to the offence of causing public nuisance: 17 I. C. 574. In this case it was found that the road was not as a fact obstructed.

Obstruction of public way is an offence under S. 283, I. P. C. 29 I. C. 832, 38 Mad. 305.

Encroachment upon a public road is an obstruction to the public path, and it is a nuisance in itself under S. 268 of the Penal Code. No length of user can justify an encroachment upon a public way. The question of a sufficient width of the road being left in support of the encroachment, for public use is no ground for allowing the encroachment or obstruction to continue. It is the duty of the magistrate to come to a finding, whether the claim of the person complained of, to such encroachment is *bona fide* or not, and question of possession is relevant for this purpose. 1927 Pat. 265, 105 I. C. 238.

Public nuisance and special damages.—Public nuisance is not by itself an actionable wrong but a public nuisance may under certain conditions become a private wrong. A person founding a cause of action upon a public nuisance has to establish a particular injury to himself

*Cf. S. 172 of Punjab Act.

beyond what is suffered by the rest of the public. Every citizen having a house abutting on or adjoining a public thoroughfare has the legal right to make a legitimate and reasonable user of the thoroughfare along its length and breadth for himself, his cattle or his conveyance leading from his door to any part of the highway, his right in this respect should be protected and enforced so long as it is not inconsistent with the rights of other persons using the pathway for themselves for purposes of traffic. This right exists independently of prescription and is a sort of common law right. Thus, if the width of the thoroughfare has been encroached upon by the defendant resulting in the plaintiff not being able to utilize the highway in the same manner as he used to do before and the plaintiff cannot turn his cart round the road on account of this obstruction, a special damage has arisen to the plaintiff and the matter is actionable. 1929 All. 767.

Plaintiff was in possession of a house from the windows of which there was an uninterrupted view of part of a certain thoroughfare along which it was announced that a public procession was to pass. One G agreed to take and pay for seats on the first and second floor of the house in order to see the procession. Then defendant, a metropolitan borough, in pursuance of a resolution of the board caused a stand to be erected across a certain highway to enable members to view the procession. This stand was a public nuisance and it obstructed the view of main thoroughfare from the windows of the plaintiff's house. G, when he saw the stand in course of erection, asked to be released from the contract and plaintiff did release him.

In an action for damages for the wrongful interference with the enjoyment and use of her house and the special loss she had sustained by the wrongful act of the defendant: *Held* she was entitled to recover damages. *Campbell v. Paddington Corporation*, (1911), 1 K. B. 869.

Easement for discharge of water through a channel across a public road cannot be acquired by prescription as this will amount to public nuisance. Unless such prescriptive right is acquired before the site became a public road because the rights of the public will be subject to the pre-existing easement. 21 I. C. 857.

Obstruction of access to highway from private property constitutes special damage. — A right of immediate access from private property to public highways is recognized in law as a private right distinct from the right of the owner of that property to use the highway itself as one of the public. Although

the plaintiff must show a particular damage it is clear that a private right of this kind has been recognised as being particular damage in the case of individual member who had enjoyed access to the highway from adjoining property. 46 All. 573, 82 I. C. 751, 1924 All. 715.

Where the plaintiff would every day and every hour of the day when he desired to leave his house by the entrance on a particular side be compelled to go the other way and travel at least three or four times as far and three or five times as fast if he were pressed for time: *Held* that would amount to special damage or a more particular form of nuisance suffered by him than by the general public. 45 All. 470.

Effect of S. 91, Civil Procedure Code, considered. 45 All. 470; 1924 All. 599.

The finding that a public lane has not been narrowed down so as to cause damage to the residents in the lane is a finding of fact which cannot be called in question in second appeal in the High Court.

Private persons who merely happen to reside in houses in a public lane cannot sue for alleged encroachment in that lane for no right of easement can be acquired over a public lane. 1929 All. 504; 113 I. C. 520.

Exceptions to the above in case of the person dedicating the road.—The rule that a member of the public cannot maintain an action for obstruction to a public road without proving a special injury to himself beyond that suffered by the public, is not applicable to the case of a zamindar who or whose predecessor in title had dedicated to the public the road over the zamindari land.

When a zamindar gives a right of way over his land, he only gives the public a right to use the land for the purposes of the road and he does not give the public or any one else a right to interfere with the soil of the road, as, for instance, by building a house upon it or turning the road into a garden.

A zamindar has over and above the right to use the road as a road, a right to the soil in the road which he had never given to the public so that a suit by him for the removal of an obstruction is not as a guardian of the public but in respect of an interference with his own rights of property: 10 All. 553. This case was, however, not followed in 27 Cal. 793 where it was held that zamindar's case is no exception to the general rule. Similarly in 2 N. L. R. 110, it was laid down, "The soil of street belongs *prima facie* to the owner of the land adjoining it. But the ownership is subject to

the right of the public to use the street or highway. Any use of the soil of the highway other than the legitimate use of it for purposes of a highway, is a trespass upon that soil as against the owner to whom it still belongs.

Suits for removal of obstructions in public ways.—Where the defendant has erected an obstruction in a public thoroughfare thereby causing inconvenience to the plaintiff with the rest of the public, a civil action for their demolition cannot be maintained by the plaintiff alone, unless it is alleged and proved that special or particular injury or damage was sustained by the plaintiff in consequence of such obstruction: 1 All. 249; 10 All. 498; 2 Bom. 457; 9 Mad. 463; 14 Mad. 177; 22 Cal. 551; 27 Cal. 793; 25 I. C. 193. As regards what constitutes special injury or inconvenience *see* P. R. No. 4 of 1895, P. R. 64 of 1901, 5 C. W. N. 295.

Where a public passage, $2\frac{1}{2}$ cubits in width has been narrowed down to 22 inches, there is a special damage inasmuch as leaving such a narrow passage is practically blocking the road. 25 I. C. 266.

Municipality alone competent to deal with trespass on streets.—When the plaintiff sued the defendants for trespass on a lane which was found to be a public thoroughfare within municipal limits, *held* that the land in suit, as a public thoroughfare within the limits of the limits of the municipality, vests in the municipal board. The acts complained of in the plaint are acts of interference with the surface of the soil and with the use of the land as a public lane, so that it would seem *prima facie* that no one except the municipal board had a right to complain of the trespass alleged in the plaint. 1922 All 485, 70 I. C. 158.

Obstruction of access to public right of way.—Every person is entitled to access to a public way from his premises and obstruction to such access gives a right to restrain such obstruction. 33 Cal. 1243.

The right of a person to have access to his land abutting on a public path is not a private right for the infringement of which he has a separate cause of action apart from the public and on obstruction of such a right he cannot maintain a suit without alleging and proving special damage of a substantial character. 21 I. C. 601.

The right of access to the highway must be distinguished from the right to transfer goods from vans in the highway across the pavement to the private premises. The former right is a private right, and any interference with it is an interference with a private right; but the latter right is

a right enjoyed by the owner as one of the public entitled to use the highway. Where, therefore, a local authority in the metropolis, acting *bonafide* under the Metropolis Management Act, 1885 (f), (18 and 19 Vict. c. 120.) S. 130, erected a lamp post on the pavement near the kerb, in such a position to the plaintiff's premises as to obstruct or prevent him from loading and unloading goods to be taken into his premises, it was *held* that he had no legal ground of complaint: (*W. H. Chaplin & Co., Limited v. Westminster Corporation*, [1901] 2 Ch. 329). And so where a corporation authorized by a local Act to erect in the streets such works as might be necessary for their tramways, proceeded in good faith to erect a pole and fuse-box in the pavement close to the principal entrance of the plaintiff's premises, to which the plaintiff objected and claimed an injunction: it was *held* that he was not entitled to an injunction. *Goldberg & Sons Limited v. Liverpool Corporation* (1900), 82 L. T. 362.

Rights of public in public streets.—Any member of the public has got the right to use the public street in any lawful manner and a declaration can be granted if he is prevented from so doing without proof of any special damage. 1926 Mad. 830.

Dispute of title between the Committee and the private individual.—Where there is a clash between municipal committee on the one side and a private individual on the other with reference to some property, the matter has got to be adjudicated by the civil court which is the only forum for determining the title. The straightforward course in such a case is the institution of a suit in the civil court. The remedy provided by S. 265 of U. P. Act (corresponding to S. 173 of Punjab Act) may be cheap, swift and within a certain range effective. This section, however, is not intended to arm a municipal board with powers to disturb the possession of any person who asserts a lawful title to the property in controversy.

Where a record plan has not been shown to be prepared by a public servant in the discharge of his official duty or by any other person in pursuance of his duty specially enjoined by the law of the country, nor has it been established by evidence that the said document formed the act or record of the act of public officers within the meaning of S. 74, the record plan cannot be admitted in evidence either under S. 35 or S. 74 in the absence of proper evidence and of necessary particulars.

The *onus* of proving that the site in dispute is a public street or part of a public street lies upon the committee.

A site plan prepared for the purposes of a case can have very little probative value on the question of title. Entries in such documents in support of title of a municipal board are no more than admission in favour of the board and are not relevant.

The fact that the municipal board has on several occasions demolished a *chabutra* constructed by a party on the disputed land and realized the cost does not amount even to an assertion of title on the part of the municipal board and is absolutely inclusive. 1930 All. 26; 120 I. C. 547.

Notice.—A notice under S. 172 or 175 simply calling upon the offender to show cause was not a notice to remove obstruction. 44 I. C. 744.

When a notice is served on an owner for removal of obstructions, he cannot be allowed to urge that the encroachment does not cause any practical inconvenience or the road in front is very wide and traffic will not be obstructed. Obstruction along the street means obstruction to the passage along the whole of the street. In the Bombay Act all obstructions or encroachments causing obstructions to the convenient passage along the street occur and in spite of these words the plaintiff was not held entitled to injunction. 12 Bom. 474.

The only requirement of S. 202 of Bengal Act, 1884 is that the commissioners shall issue a notice which shall show to the opposite party in a way in which he can understand what the obstruction or the encroachment is that he is required to remove. Hence a notice directing a hut to be removed and expressly referring to S. 202 is not bad simply because it describes the hut as having been put upon the roadside land and not as having been put upon the road. 1931 Cal. 808; 58 Cal. 1135, 134 I. C. 753.

Obstructions: remedy by ejectment.—A municipal corporation entitled to the possession and control of streets and public places may, in its corporate name, recover the same in ejectment. Where it possesses the fee, although in trust for public uses, there are no technical obstacles in the way of maintaining such an action against the adjoining proprietor or whoever may wrongfully intrude upon, occupy, or detain the property. And where the adjoining proprietor retains the fee, the courts have overcome the technical difficulty by regarding the right to the possession, use, and control of the property by the municipality as a legal, and not a mere equitable right. Dillon, p. 1792.

Cf. also 25 Mad. 635 where immovable encroachment had been constructed without written permission and the

obstruction is not recent, the remedy by ejectment will be safer to adopt in view of P. R. 2 of 1915.

Permission subject to conditions.—The committee, when granting permission for encroachments, may prescribe conditions. These conditions can only be such as are authorised by law. Conditions securing the safety and convenience of the public or in the interests of the maintenance of the streets may be prescribed. If encroachments under S. 172 are permitted, the committee cannot levy any rent for the use of the street under the encroachment. Levy of fee under a corresponding section of the Bombay Municipal Act was not held to be *ultra vires*. Cf. 45 I. C. 503, 42 Bom. 454.

Interpretation of Statutes.—Sections 172 and 175 and Section 14 of Electricity Act.—Defendants were a corporation who had obtained a license under Indian Electricity Act and as licensees under the Act had put up aerial line etc., on a certain street in the Municipality of Karachi; the municipality having arranged with North Western Railway Company that the latter should erect an over-bridge the aerial line and the poles had to be shifted from their position. The committee sued for declaration that the cost of removal should be borne by the defendants: *Held* that S. 14 of the Electricity Act applied and not the Bombay District Municipal Act and the plaintiffs must bear the cost of removal though under the Municipal Act the committee could ask for the removal of any obstruction in the street without payment of compensation.

Where there are two conflicting provisions of the legislature and the question is which must be taken to govern the case it is the duty of the court to see the terms of which provision are more appropriate to the circumstances of the case, in order to decide whether the one provision or the other governs the right of the parties. Where the rights of the parties have been expressly laid down in an Act specifically appropriate to classes of transactions exactly similar to those which are the subject of enquiry it must be clearly made out that a general Act governs the case which is applicable not to the particular class of transactions or persons before the court but to a body of persons amongst whom the parties may be brought. It must be very clearly shown that such general Act is entitled to override the special Act. 1926 Sind 115, 95 I C. 226.

Sections 172 and 175.—Where a projection has existed before the commencement of the Act, it can be removed by notice under S. 175 or S. 172 (3).

No distinction is drawn between projections which became lawful before the commencement of the Act and

projections which became lawful after its commencement and, therefore, a municipal council is empowered to remove an encroachment the title to which was perfected before the commencement of the Act. *Cf.* 1928 Mad. 477; 51 Mad. 318.

Projections overhanging public streets and built contrary to permission of municipality but not coming under S. 172 and allowed to remain for 16 years must not be removed by the municipality by executive action. 1921 Bom. 130; 23 Bom. L. R. 193, 62 I. C. 913.

Validity of notice - A notice which contains two directions, one of which is good and the other bad, is bad in its entirety; and hence failure to comply with it, does not make the owner liable for penalty laid down in S. 220; 1 Weir 749, and 1933 Lah. 935, 34 P. L. R. 636.

Plaintiff in this case had a thirty-year-old unroofed projection overhanging the street. He repaired the projection, and in doing so constructed a roof of tin sheets on the projection. Plaintiff was served with a notice calling upon him to demolish the entire projection including the old structure. On his failure to comply a notice under S. 220 was issued. As the direction regarding old projection was bad, the entire notice was held to be bad.

Delegation - Powers under S. 172 (2) can be delegated under S. 33 (a).

Power to
permit occu-
pation of
public street
and to remove
obstruction.

173. (1) The committee may grant permission in writing, on such conditions as it may deem fit for the safety or convenience of persons passing by, or dwelling or working in the neighbourhood, and may charge fees for such permission, and may at its discretion withdraw the permission, to any person to :—

- (a) place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer, drain or watercourse or any movable overhanging structure projecting into such public street at a point above the said ground level,
- (b) take up or alter the pavement or other materials for the fences or posts of any public street,
- (c) deposit or cause to be deposited building materials, goods for sale, or other articles on any public street, or,
- (d) make any hole or excavation on, in or under any street, or remove materials from beneath any street, so as to cause risk of subsidence, or,

- (e) erect or set up any fence, post, stall or scaffolding in any public street.

(2) Whoever does any of the acts mentioned in sub-section (1) without the written permission of the committee shall be punishable with fine which may extend to fifty rupees and the committee or the secretary of the committee or the Medical Officer of Health or any person authorised by the committee may—

- (i) after reasonable opportunity has been given to the owner to remove his material and he has failed to do so, remove or cause to be removed by the police, or any other agency, any such movable encroachments or overhanging structures and any such materials, goods or articles of merchandise and any such fence, post, stall, or scaffolding,
- (ii) and take measures to restore the street to the condition it was in before any such alteration, excavation or damage.

(3) If the material specified in clause (i) of sub-section (2) has not been claimed by the owner within a fortnight of its having been deposited for safe custody by the committee, or if the owner shall fail to pay to the committee the actual cost of removal or deposit in safe custody, the committee may have the material sold by auction at the risk of the owner, and the balance of the proceeds of such sale shall after deduction of the expenditure incurred by the committee be paid to the owner, or if the owner cannot be found, or refuses to accept payment the balance shall be kept in deposit by the committee until claimed at the risk of the person entitled thereto, and if no claim is made within two years the committee may credit the amount to the municipal fund.

Explanation.—For the purposes of this section ‘movable encroachment’ includes a seat or settee, and ‘movable overhanging structure’ includes an awning of any material.

Notes

S. 164 of the old Act was entirely recast when Act III of 1911 was enacted; the section has again been recast and has been substituted by S. 65 of the Punjab Amendment Act, III of 1933.

S. 170 of Act III of 1911 has been omitted and its provisions have been incorporated in S. 173. The old Ss. 170 and 173 as they originally stood before the Punjab Municipal Amendment, III of 1933, came into force are given below for reference:—

170. The committee may grant permission in writing for the temporary occupation of any street or land vested in it for the purpose of depositing any building materials or making any temporary excavation therein or erection thereon, subject to such conditions as it may prescribe for the safety or convenience of persons passing by or dwelling, or working in the neighbourhood, and may charge fees for such permission, and may at its discretion withdraw the permission.

173. (1) Whoever, without the written permission of the committee—

- (a) places in front of any building any movable encroachment upon the ground level of any street or over or on any sewer, drain or water-course or any movable overhanging structure projecting into the street at a point above the said ground level,
- (b) takes up or alters the pavement or other materials or the fences or posts of any street,
- (c) deposits [or causes to be deposited] building materials, goods for sale, or other articles of merchandise on any street, or
- (d) makes any hole or excavation on, in, or under any street, or removes materials from beneath any street, so as to cause risk of subsidence,
- (e) erects or sets up any fence, post, stall, scaffolding in any public street,

shall be punishable with a fine which may extend to fifty rupees.

(2) The committee or the secretary of the committee may—

- (i) summarily remove, or cause to be removed by the police, or any other agency any such movable encroachments or overhanging structures and any such materials, goods or articles of merchandise, and any such fence, post, stall or scaffolding,
- (ii) take order summarily to restore the street to the condition it was in before any such alteration, excavation or damage, and
- (iii) recover the expenses incurred by the committee under this sub-section from the offender.

Explanation.—For the purposes of this section ‘movable encroachment’ includes a seat or settle, and ‘movable overhanging structure’ includes an awning of any material.

Changes and their effects—Throughout the section except in sub-clause (d) the words “public street” have been substituted for the word “street.” This change will work to the prejudice of people living in new streets which have not yet become public. Years may elapse before such streets are declared public and the residents or persons building houses

can deposit building materials, goods for sale or do all acts prohibited under clauses (a), (b), (c) & (e) with impunity and the municipal committee will have no power to prevent these acts under S. 173. The whole width of the street may be occupied or altered without incurring any liability and the residents are only left to the lengthy process of seeking their remedy in civil courts.

The scope of the powers under sub-section (2) has been well defined. The provisions in the old S. 173 with reference to removal of encroachments were very vague and indefinite, and the practice of some of the municipal officers removing the goods without giving any opportunity to the owner to remove the goods and then taking these goods to municipal office and refusing to return them unless fine or penalty was paid was not justified. This has now been made clear. Expenses of restoration of street as contemplated by sub-clause (ii) of sub-section (2) have not been made recoverable. Similarly if the actual cost of removal of goods and materials and deposit in safe custody under sub-clause (i) exceed the amount recovered by sale of such goods no means for recovery of the deficiency have been provided.

Analogous Law:—

Ss. 217 (5) & 269, Bengal District Municipal Act, 1884.

Ss. 238, 240 & 357, Bengal Municipal Act, XV of 1932.

S. 182, Behar and Orissa Municipal Act, 1922.

Ss. 151, 152 & 155, Bombay Municipal Boroughs Act, 1925.

Ss. 121, 122 & 125, Bombay District Municipal Act, III of 1901.

Ss. 313 & 314, Bombay City Municipal Act, III of 1888.

Ss. 86, 115 & 116, Burma Municipal Act, III of 1898.

Ss. 287, 300, Calcutta City Municipal Act, III of 1923.

S. 118 (a) (viii), Cantonment Act, II of 1924.

Ss. 94 & 184, Central Provinces Municipal Act, II of 1922.

Ss. 214 & 226 (d), Madras City Municipal Act, 1919.

Ss. 173 (d) & 186, Madras District Municipal Act, V of 1920.

Chapter IV of Schedule 1 Rangoon City Municipal Act, 1922.

Ss. 215, 220, 261, 265 & 266, U.P. Municipalities Act, 1916.

English Law:—

S. 149, Public Health Act, 1875.

S. 51, Highway Act, 1864.

Executive Officers Act.— Powers under S. 173 will not be exercised by the committees but shall be exercised by executive officers in municipalities to which that Act is extended—*vide* S. 4 (b) Schedule 1.

Executive officers Act refers to S. 170 of the Municipal Act before its amendment by Act III of 1933. S. 170 is now incorporated in S. 173 and hence the powers under existing S. 173 will now vest in the executive officers.

Delegation.—Powers under S. 173 can be delegated under S. 33 (a).

Fees.—Such fees are recoverable under S. 81 of the Act. When building materials are deposited without written permission, the municipality cannot recover any fees under the Act.

Under S. 183 (1) (u), the committees are empowered by bye-laws to regulate the conditions on which and the period for which permission may be given under S. 173 (1) and provide for levy of fees and rents for such permission. The levy of fees has been provided in the section itself and the provisions of S. 183 (1) (u) would therefore appear to be partly redundant.

Power to lease or auction the right to levy fees.—The Municipal Act does not give to a municipality, either expressly or by necessary implication, power to lease or auction the right to levy the fees due for temporary occupation of municipal land. Cf. 1923 Bom. 282; 52 Bom. 414.

Scope of S. 173.—It will be seen that certain specific forms of encroachments are dealt with.

In certain respects the old S. 164 of Act of 1891, was much wider and included encroachments which would not now be included. Movable encroachments not specifically covered by S. 173 or S. 182 will have to be dealt with under Indian Penal Code.

The Municipal Committee of Lahore found itself unable to remove encroachments on streets in the shape of boys attending *panda* schools. As is well known the boys are made to sit in the streets. This was no doubt an encroachment. Old S. 164 would have covered such an encroachment but S. 173 could not deal with such encroachments as it dealt with specific acts of encroachments. There was no clause making any other act of encroachment an offence. In big cities like Lahore gramophone music is played in the evenings to attract customers. Similarly mechanical toys are displayed in the windows for the same purpose. Crowds are attracted by the show and cause intolerable obstruction to traffic. Unless the committee decides to take action under S. 133, Cr. P. C. or under S. 283 or 289 of the Indian Penal Code, there is no remedy under the Municipal Act

This section deals with temporary obstructions which would be an offence unless permission is granted for making them. It has nothing to do with giving licenses for keeping an ice depot. Cf. 1926 Mad. 381.

S. 173 is not applicable to a structure overhanging a street. 1929 Lah 701; 1930 Lah. 246; 11 Lah. 276; 1933 Lah. 394.

Excavation: Liability of corporation for damage.—The municipalities are, so far as the municipal funds permit, bound to maintain and repair and light all public streets. In allowing temporary excavations the municipality is not relieved of its statutory duty of maintaining the street. Permission was granted to a Government official to open one of the public streets for the purpose of carrying off surplus water from a tank which was under the control of that officer. The permission granted contained the usual conditions that a licensed contractor should be employed to do the work. The road was opened but was left unfenced and insufficiently lighted with the result that a man driving along the road was badly injured, the municipality was *held* liable for damages for breach of their statutory duty. 10 Cal. 445.

It was culpable negligence to allow an excavation of large dimensions in a public street to remain open at night without sufficient protection being provided against accidents. At the instance of the corporation the Secretary of State was impleaded in this case. The first court dismissed the suit against the Secretary of State. The corporation contended that they were not guilty of negligence as the excavation was not made by them and that they were not aware that it was not sufficiently lighted or fenced. It was the duty of Government to light or fence the excavation. The corporation had power to grant permission for excavation and no negligence is imputed to corporation for grant of this permission. It was *held* that the power to grant permission does not absolve the corporation from its general duty to keep the road in a safe condition.

Breach of conditions under which permission is granted.—Where the accused deposited bricks under a permit which required that the building materials should be fenced off and the accused failed to fence off the bricks deposited on the footpath he was *held* to have committed an offence under S. 173. Cf. 41 I. C. 129.

Necessary and temporary obstructions to use of street.—The primary purpose of a street is for passage and travel, and that unauthorized and illegal obstructions to its free use come within the legal notion of a nuisance. But it is not every obstruction, irrespective of its character or purpose, that is illegal, even although not sanctioned by any express legislative or municipal authority. On the contrary, the right of the public to the free and unobstructed use of a

street or way is subject to reasonable and necessary limitations and restrictions. The carriage and delivery of fuel, grain, goods, etc., are legitimate uses of a street and may result in a temporary obstruction to the right of public transit. So the improvement of the street or public highway itself may occasion impediments to its uninterrupted use by the public. And so of the improvements of adjoining lots by digging cellars, by building, etc.; this may occasion a reasonable necessity for using a part of the street or sidewalk for the deposit of materials. Temporary obstructions of this kind are not invasions of the public easement, but simply incidents to or limitations of it. They can be justified when, and only so long as they are, reasonably necessary. There need be no absolute necessity; it suffices that the necessity is a reasonable one. But this will never justify the leaving of the street or way in an unsafe and dangerous condition, or its use in an unreasonable manner or for an unreasonable time. Dillon, pp. 1856-7.

The accused unharnessed his horse from his carriage on the roadside, placed the former in its stable and the carriage in the coach-house. The carriage did not stand for a considerable time on the road: *Held*, that accused was not guilty of an offence under S. 173 or 182. 20 L. C. 1003.

Temporary obstructions by building materials.—Similar considerations determine the lawfulness of temporary obstructions of city streets by building materials or in connection with the improvement of the street itself, or for the purpose of constructing a public improvement or work therein. The temporary and necessary obstruction of public travel for these purposes is justified. But the obstruction must be reasonably necessary, due precautions to avoid injury to travellers must be taken, and the obstruction must not continue for an unreasonable length of time. Dillon, p. 1862.

Municipal control over use of streets by deposit of building materials.—As a city corporation may be compelled to pay damages caused by the negligent manner in which persons occupy or use sidewalks and streets with building materials it may impose reasonable conditions on those who wish thus to use or occupy the streets or sidewalks,—as for example, require them, by ordinance, to give bond to indemnify the city against losses or damages caused by the manner in which the privilege to use and occupy the sidewalks and street is exercised. Dillon, p. 1863.

Ss. 172 and 173 deal with obstructions both temporary and permanent which may be allowed by the committees on the streets and the rights of the public over the streets may be limited to that extent. As regards other necessary and

temporary obstruction of streets as obstruction due to carts loading and unloading goods before business premises may be taken as legitimate uses of the street for which no express provision is made in the Act.

Electricity Act, Tramway Act and Railway Act.—Under these Acts also streets can be broken up or works constructed on streets with the consent of the local authority.

Breaking open streets.—In general no person or company may take up or interfere with a highway so as to create a nuisance. See *R. v. Longton Gas Co.*, (1860) 29 L. J. M. C. 118; *Att.-Gen. v. Scott*, (1904) 1 K. B. 404. In *Stockport Waterworks Co. v. Manchester Corporation*, (1863) 9 Jur. (N.S.) 266, it was held that the taking up of the pavement and digging trenches in the roadway and footway of a public thoroughfare, in order to lay down service pipes for the supply of gas from mains to private houses, are not acts which can be justified at common law as done in the exercise of the right of every occupier of a house to make such a temporary obstruction of the highway as may be necessarily incidental to the enjoyment of his property: and a house-holder who authorizes such acts, and they who do them, having no parliamentary powers for the purpose, are liable to be indicted for a nuisance. No lapse of time is an answer to an indictment for causing a nuisance on a highway. *R. v. Cross*, (1812) 3 Camp. 224; *R. v. Edwards*, (1847) 11 J. P. 602.

For further notes see Lumley's "Public Health Acts" 10th Edition pp. 300-1.

Sign-boards.—Projecting sign-boards overhanging in the streets will be covered by the word structure. Under a corresponding provision in the Bombay Act, III of 1901, such projecting boards were held to be unauthorized and the committees were held justified in charging fee for permitting them to be put up: 45 I. C. 503; 42 Bom. 454. Municipal committees in the Punjab have specifically been empowered to charge fee.

Written permission, leasing of streets.—In a recent Multan case the committee was found to have leased a portion of the street in front of the building, and the owner of the building sued to enjoin the committee from leasing the street as interfering with his access to the building. The High Court held that where a street is vested in a municipal committee it has power only to the extent of exercising its rights over it in order to maintain it as a street. It cannot use the public street otherwise than as a street and it cannot interfere with the enjoyment of the right of the way by the public by leasing portion of it to private individuals. (1923) Lah. 272.

It will be noticed that the decision was not based on the ground that the leasing of the street had caused obstruction to the plaintiff's access to his building. The decision declared illegal the general practice of municipalities of leasing roadside *patries* from which they derive considerable revenue. This practice had also its sanction in the Account Code which is a rule sanctioned by Government under S. 240. The judgment will also mean that no obstructions, temporary or otherwise, can be allowed on the streets. If the Act had only vested streets in committees and gave them no further powers the judgment would not have been open to any objection. Provisions of Ss. 170 and 172 and 173 authorize committees to permit encroachments while Government Notification No. 243 of 20th April 1886 (*Expl.*) expressly allows leasing of streets.

It was not and could not be contended that the streets could be leased to the private injury of any individual.

However, this ruling is no longer binding as the recent amendment of S. 188 has specifically allowed committees to charge rent or fee for permission under S. 173. *See* clause (u) of S. 188.

Use of municipal streets for storing fuel.—A strong presumption arises that the legislature did not intend by the general powers it gives to the municipality to discontinue or stop up public streets that they should use that power for a purpose which contravenes the intention shown by S. 122 (a provision disallowing obstruction of public streets by permanent structures or movable structures) of Bombay Municipal Act. It rests upon any one who supports the action of the municipality to show that it has statutory authority to divert a portion of a public street for such a purpose. A municipality has no power to authorize the use of a part of a street for the purpose of keeping logs of wood for sale. *Cf.* 1926 Bom. 535, 50 Bom. 674, 97 I. C. 744.

Lease of road side plots—Termination of lease by a proper notice.—Applicant was allotted under a lease one of the plots given to stall-holders along the side of a public road in a municipality; the municipality later on passed a resolution that this roadside should not be leased in future to stall-holders and the present stall-holders should be told to quit. The executive officer of the municipality issued a notice under S. 173 to the lessees to moveout, treating the lessees as trespassers making an encroachment on a public road; the petitioner was convicted for failure to comply with the notice: *Held*, that it was the duty of the executive officer to give a proper notice terminating the tenancy and that the conviction

was illegal. It was incumbent on the municipality to issue a proper notice as required by the Transfer of Property Act. If such a notice was not complied with it was open to the municipality to treat the applicant as a trespasser and his possession of the roadside as an encroachment, and to issue a notice under S. 173. *Cf.* 1928 All. 95, 26 All. L. J. 328, 107 I. C. 690.

A lease granted under S. 173 for occupying a portion of a street can only be terminated according to law and it does not come to an end at the sweet will of the committee by passing a resolution.

A municipal committee granted a lease of the immovable property. The lease was from month to month. No notice as required by law was given, but the committee passed a resolution by which the lessee was to quit the land after seven days' notice. On lessee's failure to do so, he was convicted for breach of bye-law No. 5 (A) providing that lessee should vacate on expiry of lease: *Held* that the lease can only be terminated with fifteen days' notice. As no such notice was given, there was no breach and the conviction was illegal. *Cf.* 1929 Nag. 332.

A person placing goods on a part of the street leased out for placing goods can not be punished under S. 173.

The essence of an offence under S. 173 of the Punjab Municipal Act is the placing of goods on a street without the permission of the municipal committee, but the committee having farmed out its rights to a third person, no offence under the section can be committed. P. R. 22 of 1919 Cr., 51 I. C. 676.

Customary right to obstruct the highway.—Such a custom was set up in answer to a prosecution under S. 103, Highway Act, 1835 (corresponding to S. 173 of the Punjab Act) but was not sustained. On the hearing at the Guildhall Police Court of a charge of obstructing the highway by allowing a chair to remain on the footway, it was given in evidence that for at least fifty years it has been the custom for the residents of a street in Houndsditch to bring out chairs in the evening and sit on the pavement round their doors chatting with their neighbours. The custom was of course, no defence to the criminal charge of obstructing a highway. The right which any of the King's subjects has at common law is merely to use the highway to pass along it: *Dovaston v. Payne*, (1795) 2 Hy. Bl. 527. It is true that the tendency in modern cases is to enlarge this use, or as Esher, M. R., remarked in *Harrison v. Rutland* (1893) 1 Q. B. 142, at p. 146: "Highways are no doubt dedicated

prima facie for the purpose of passage; but things are done upon them by everybody which are recognised as being rightly done, and as constituting a reasonable and usual mode of using a highway as such."

Still this could hardly be held to cover the use of a highway as a platform for chairs and a custom could not be admitted to justify the wilful obstruction of a highway contrary to S. 103 of the Highway Act, 1835, which makes such obstruction an offence punishable summarily with a fine of 40s. over and above the damage occasioned.

The public has a right to the free use of any portion of the highway and an encroachment made by an adjacent landowner on the space occupied by the highway cannot be legalized by possession for any length of time. Occupation for any length of time or obstruction cannot prejudice free use by the public for the purpose of passage for which the highway is meant. 1931 Bom. 326.

Deposits of articles on roads.—The depositing by any person of any article on the street except with the license of the municipality is an obstruction. The public are entitled to the whole width of the road unimpeded by any article deposited therein and any obstruction, however small, is punishable in law. 11 Mad. 343.

A balcony eleven feet above the level of the street is not an encroachment within S. 173: 44 I. C. 744. S. 173 makes an encroachment punishable without a notice of a removal being issued to the offender but a daily fine cannot be imposed under that section.

No offence is committed by placing goods on a street farmed out by the committee to a third person. S. 173 is not applicable to a part of the street leased out to a person for the express purpose of his renting portions of it to shopkeepers for placing goods. 22 P. R. 1919 Cr.

A person was convicted of obstruction to public highway by placing building materials under Calcutta Police Act. The accused had a license for placing materials from the municipal corporation but had not carried out the conditions of the license. It was contended on his behalf that he could not be held liable under the Police Act. The conviction was maintained and it was held that the offence committed under the Police Act was also committed. The question whether the Police Act repealed the similar provisions in the Municipal Act was not decided.

Movable encroachment.—Where a *takhtposh* is placed on a drain in front of a person's shop the superstructure on the *takhtposh* is a movable encroachment over the drain and

is therefore an encroachment which the municipal committee is entitled under S. 173 (2) to have summarily removed. 93 I. C. 627, 1926 Lah. 327.

Placing of moras.—Placing of *moras* by a shop-keeper in front of his shop on a public street amounts to an obstruction within the meaning of S. 164 of Act, XX of 1891. The *moras* obstruct the road even though it may at the spot be broad enough to allow vehicles to pass even with *moras* set there. The public is entitled to the whole breadth of the street to the last inch. P. R. No. 45 of 1905 Cr.

Injunction restraining criminal proceedings.—Under S. 56 sub-section (e) of Specific Relief Act a civil court has no jurisdiction to stay by means of a permanent injunction proceedings in any criminal matter and it is settled law that where the legislature has indicated a mode of procedure before a magistrate, a civil court will not interfere except in very special circumstances by way of injunction or declaration of right. Where the commissioners for the Port of Calcutta prosecuted a man for obstructing a river bank by constructing a jute mill the accused brought a suit for injunction in a civil court: *held*, that the commissioners for the Port of Calcutta cannot be restrained by injunction by a civil court from proceeding with a certain criminal prosecution instituted by them against certain persons under S. 84 of the Calcutta Port Act for contravention by said persons of the provisions of S. 83 of the Act, (failing to remove encroachment on the high water of the river). *Cf.* 1928 Cal. 464; 55 Cal. 978.

Public nuisance.—The act of a person in depositing such articles on the public road also amounts to the commission of a public nuisance and is punishable under S. 290, I. P. C. 1 Wier 232; 7 Mad. L. J. 95.

Encroachment on a public road, however small, constitutes a public nuisance. 6 Lah. 203.

If a man puts a bench on the pavement in front of his shop in a municipal street without the permission of the municipality obstruction of the public road must be presumed. 1928 All. 60, 109 I. C. 809.

Proof of actual obstruction.—Where a person is accused of placing the articles enumerated it is not necessary to prove that actual obstruction was caused. The legislature has assumed that the acts contemplated constitute obstruction of streets. *Cf.* 58 I. C. 944.

Where a *prabha* left lying in a public road could not fail to cause obstruction to any person who had occasion to pass along that road:

Held, that though obstruction to any individual was not expressly proved, it was a matter of necessary inference. 38 Mad. 305, 29 I. C. 832.

Playing of music.—Under a somewhat analogous provision of the City of Madras Municipal Act it was *held* that playing of music in a private place and thereby collecting crowds of people in the street amounts to causing obstruction of the street: 14 Mad. 223. Under the existing law in the Punjab this will not be an offence under S. 173. It would have been an offence under S. 164 of the old Act of 1891.

The taking out of a procession accompanied with music whether as a part of religious worship or not, is within the civil rights of a community but not an exclusive use of the highway for worship.

Worshippers in a mosque or temple which abut on a highway have no right to compel the processionists to stop their music completely while passing a mosque or temple on the ground that there was continuous worship inside it. Even if music, whether religious or not, offends against the religious sentiments of another community, it cannot be objected to on that ground. The stopping of the music would offend the religious sentiments of the processionists just as much as its continuance may offend the religious sentiment of the other. There can therefore be no right to insist on its complete stoppage.

No right can be claimed to block a public thoroughfare completely so as to prevent other persons from exercising their right of way. The police authorities are responsible for a proper regulation of traffic and can issue necessary orders for that purpose. Magistrates are competent to issue directions to prevent obstructions of public thoroughfares.

The civil courts have no concern with the power of a magistrate to issue whatever orders he considers necessary, even if it restricts the ordinary right of using a public thoroughfare, when he apprehends a danger or in urgent cases of nuisance under S. 144 and other sections of Criminal Procedure Code. No civil suit lies in a civil court to question the propriety of any such order. The right of way over a public road must always be subject to such orders of the magistrate. 53 All. 484; 1931 All. 341.

Lawful user of highways.—Every person who uses a highway for a legitimate purpose, that is to say, for the purpose of walking along or alone or even as a member of a procession which is allowed by law and which is inoffensive to the community, is entitled to go along that highway without any impediment; and that man who obstructs him in the use

which law gives of that highway, may be liable to have a civil suit brought against him.

Right to carry processions.—A highway is primarily intended for the use of individuals passing and repassing along it in pursuit of their ordinary avocations; but in India highways have, from time immemorial, been used for passing and repassing of processions as well as of individuals, and there is nothing illegal in a procession or assembly engaging in worship while passing along a highway. 26 Mad. 554.

This right to carry religious processions is a right inherent in every person provided such a person does not thereby invade the rights of property enjoyed by others or does not interfere with the ordinary use of streets by the public and provided further that the right is exercised subject to such directions and prohibitions as may be issued by the magistrate to prevent obstruction to the thoroughfare or breach of the public peace. 2 Mad. 140; 6 Mad. 203; 26 Mad. 376; 30 Mad. 185; 32 Mad. 478; 34 Bom. 571; 1931 All. 341; 1925 P. C. 26. See also 1933 Lah. 344.

There is a right in British India to conduct a religious procession with its appropriate observances along a highway. No restrictions can be put on the right except that it should be exercised subject to the orders of the magistrate and of the Police authorities and of public rights. 53 All. 836; 1931 All. 674.

Sewers and drains.—Sewers and drains, etc., mentioned in clause (a) refer to public sewers and drains and water-courses. The action of private proprietors with drains on their private property is not intended to be rendered illegal. 2 I. C. 408; 6 All. L. J. 544.

Necessity of notice.—Although a municipality may as a matter of courtesy send a notice to a person alleged to have placed an encroachment to remove it, such notice is not authorized by S. 173 and if a person fails to comply with it he cannot be convicted under S. 219. Cf. 66 I. C. 817; 1923 Bom. 30 (1).

174. (1) Should any house, shop, wall or other building or part of a building project beyond the regular line of a street, either existing or determined on for the future, or beyond the front of the building on either side thereof, the committee may, whenever such house, shop, wall or other building or part thereof, has been either entirely or in greater part taken down or burned down, or has fallen down, by notice require such building or part when being re-built to be set back to or towards the said regular line or the front of the adjoining buildings; and the

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portion of the land added to the street by such setting back or removal shall become part of the street and shall vest in the committee;

Provided that the committee shall make full compensation to the owner of the building, or of the land thus vacated for any damage it may sustain in consequence of the building or any part thereof being set back ~~for any damage he may sustain in consequence of his building or any part thereof being set back.~~

(2) The committee may, on such terms as it may think fit, allow any building to be set forward for the improvement of the line of the street.

Notes.

S. 91 of the old Act.

Recent changes.—By S. 65 of the Amendment Act, III of 1933, sub-section (1) has been substituted for the old section with the result that for the word "building" the words "house, shop, wall, or other building" have been added. This amendment seems to be unnecessary as the word "building" included all these things.

Analogous Law:—

- S. 206, Bengal District Municipal Act, 1884.
- Ss. 217, 218 & 219, Bengal Municipal Act, XV of 1932.
- Ss. 173 & 174, Behar and Orissa Municipal Act, 1922.
- Ss. 118, 119 & 120, Bombay Municipal Boroughs Act, 1925.
- Ss. 91-A, 92 & 93, Bombay District Municipal Act, III of 1901.
- Ss. 297, 299 & 301, Bombay City Municipal Act, III of 1888.
- S. 91, Burma Municipal Act, III of 1898.

- Ss. 304-5, Calcutta City Municipal Act, III of 1923.
- S. 92, Central Provinces Municipal Act, II of 1922.
- Ss. 208-11, Madras City Municipal Act, 1919.
- Ss. 166, 168-169, Madras District Municipal Act, V of 1920.
- Ss. 171-3, Rangoon City Municipal Act, 1922.
- S. 222, U. P. Municipalities Act, 1916.

English Law:—

- S. 155, Public Health Act, 1875.

Comments.—Powers under this section are only discretionary with the result that a very useful provision is seldom if ever availed of by the committees. The provision has existed for about sixty years in the various Municipal Acts in force in the Punjab, and if this very salutary powers under this section had been used more frequently, the committees could have effected great important improvements in streets. The powers should have been made compulsory if required by Government.

Regular line.—The regular line of the street is the line of the buildings forming the street, and not a line indicating

that part of the street which is dedicated to the public as a highway. The line to be fixed need not be a strict mathematical line, but a substantially regular line, *i. e.*, such a line as shall preserve uniformity of appearance; and where the line is once fixed, it is not open to a municipality, unless expressly empowered by statute, to prescribe a different line setting back the line formerly prescribed. Though a building line is once fixed, there is nothing to prevent a local authority from giving its consent for the erection of any particular building in deviation of the building line; and from the consent so given, the old general building line is not in any way altered. As observed by Farwell, L. J., in *London County Council v. Metropolitan Ry.*, (1909) 2 K. B. 317 "It would be an extraordinary result if a public body, entrusted with the duty of preserving not mere architectural uniformity but sufficient areas of light and air for the general health and well being, should, by consenting to the erection of projections of one storey and no more in front of the line of buildings, be held to have thereby consented to the alteration of the line of buildings, so as to authorize the erection of seven or eight storey buildings." Each consent is an exception and assumes that the building line remains; and by consenting very often, it does not deprive itself of the right of refusing in future. Approval of plans showing projections beyond the building line would be consent and if, after the approval of the plans, a local authority interferes for setting back the premises, it can be restrained from so interfering. It is accordingly necessary that the line should be prescribed before the rebuilding commences. Aiyangar's "Law of Corporations," pp. 507-10.

Prescription of the regular line.—See Lumley's "Public Health Acts," 10th Edition, pp. 343-6.

Front main wall of house on either side.—A house at the corner of two streets may be in both streets for the purposes of this enactment: *Gilbert v. Wandsworth District Board of Works*, (1888) 53 J. P. 229; 60 L. T. 149; see also *London C. C. v. Lawrence*, (1893) 2 Q. B. 228; 57 J. P. 617. The respondent began to erect the front main wall of a new house in a street. At that time B had raised the front main wall of a new house, which he was erecting on the same side of the street to the height of five inches above the ground. It did not appear to what extent the other walls of B's house had been built or that they were connected with the front main wall. There was a distance of about 300 or 400 feet between the two houses, and there was no other house between them. The front main wall of the respondent's house

was six feet nearer the roadway than that of B's house. It was *held* that the respondent had not committed an offence against this enactment: *Ravensthorps L. B. v. Hinchcliffe*, (1839) 24 Q. B. D. 168; 54 J. P. 421. The grounds of this decision were: (1) that there was not, when the respondent began to build, any front main wall of a house or building on B's land; and (2) that the words "house on either side thereof" mean "house within some near distance, within some degree of proximity, and not one standing some considerable distance away."

In considering what is the front main wall of a house or building for the purposes of this section, and whether such house or building is on either side of, or in the same street as, a house or building in course of erection, all the circumstances of the case must be taken into consideration. The building must be looked at as a whole: its character, its position, its distance from the house or building which is being erected or brought forward in alleged contravention of the section must be considered; a particular wing or other projection must not be selected, the front of which is to be treated as the front main wall which is to give the governing line; nor are two buildings necessarily in the same street because one faces the same road or street, or a continuation of the same road or street, as the other. *Att.-Gen. v. Edwards*, (1891) 1 Ch. 194.

As the section prohibits a house or building being brought forward beyond the front main wall of the house or building "on either side thereof," this includes a case where there are buildings only on one side of the proposed new house or building: *Leyton L. B. v. Causton*, (1893) 57 J. P. 155. The occupier of a corner house put up a shop front (in front of his own main wall) which projected beyond the front main wall of the house on one side of it, but did not project beyond the front main wall of the house on the other side, which was separated from the corner house in question by a cross street. It was *held* that the provision of this section had been contravened. *Anderson v. Richards*, (1906) 70 J. P. 231; 4 L. G. R. 404.

Scope of the section.—The section has been held to apply only to a case where the land on which the building stands is not part of the street and does not vest in the municipality. Hence a construction such as a *chajja* or *thara* projecting over the street cannot be removed under this section. Cf. 3 I. C. 516 at p. 518.

In a Punjab case, however, where the plaintiff wished to re-erect a *chajja* projecting into the street in place of one that he had pulled down, committee's refusal to allow the

re-erection was held to fall within the powers conferred under this section or S. 175. P. R. 9J of 1893.

Alteration of the line of the street.—The regular line once determined cannot be altered; 25 Bom. 107. The section on which this ruling was based has since been amended. See now 36 Bom. 405. (1) The power to prescribe a regular line can be exercised from time to time.

On an application under the Bombay District Municipal Act, III of 1901, for permission to rebuild a house, the permit was granted subject to the condition of keeping an open space so as to leave a width of road considerably more than the width of the public road at that locality for the improvement of the said public road. No regular line had been determined either for the existing street or for the future as contemplated in S. 92 of the Act (corresponding to S. 174 of the Punjab Act):

Held that under the circumstances a set back could not be obtained under S. 92 and that the owner of the house was entitled to injunction restraining the municipality from pulling down the house built in contravention of the condition laid down by it. 38 Bom. 597; 25 I. C. 411.

Extent of damage and principles of assessing them.—Under an analogous provision of the Bombay Municipal Acts of 1873 and 1878, the municipal commissioners required the trustees of a mosque abutting the public streets on three sides to set back the building on the said three sides for the purpose of improving the public streets. It was contended that the amount of compensation to be paid to the trustees was to be measured by the loss of rent which they would have received for certain rooms which they had proposed to build on land in question:

Held that the words of S. 163 of Municipal Acts III of 1872 and IV of 1878 (corresponding to S. 174 of the Punjab Act) were intended to ensure compensation to the owner for every sort of damage and not to restrict it to compensation for such damages as he might by his own arrangement reduce it to. Compensation becomes due under the section as soon as the corporation takes possession, which is when the owner begins to build, and there being no words in the section to show a contrary intention, the compensation must be assessed according to the state of things then existing, and not upon the basis of what the owner may have it in his power to do towards diminishing the damage which would otherwise result to him.

The land so taken cannot be treated as frontage land, The fact that the owner will retain its frontage has to be

taken into consideration for assessing the compensation. The effect of its being so taken into consideration is to exclude any claim for damage arising from depreciation in the value of the rest of the owner's land, which, under ordinary circumstances, would result if the set back had become the property of the corporation subject to no condition as to the use of it.

The damage consists in the loss of a strip of land forming part of land having a frontage value, a proportionate part of which must, according to the ordinary mode of valuation, be appropriated to the strip in question. 14 Bom. 292.

Compensation for compulsory acquisition.—The 15 per cent allowed in land acquisition cases, cannot be allowed under this section. 14 Bom. 292; 13 Bom. 184.

Shall vest.—*See* Notes under S. 56. The soil of the land added to the street will also belong to the municipality in such a case.

Time for payment of compensation.—Payment of compensation is not a condition precedent to the exercise of its powers by the committee under this section. P. R. 24 of 1890 Cr.; P. R. 90 of 1898.

The extent of the destruction or pulling down necessary.—Under a corresponding S. 155 of the Public Health Act, 1875 it has been held that in order that the power given under the section to prescribe the line of frontage may arise, there must be a substantial taking down of the house or building or the front thereof. Where the defendant, with the view of converting two low-pitched floors into one lofty room, removed the front wall of the ground and first floor leaving the basement untouched and supporting the top (second) floor in the state in which it was (and which was intended to leave as it was) by means of supports placed beneath: *Held* that power to prescribe the line of frontage had not arisen. *Att.-Gen. v. Halch*, 62 L. J. Ch. 857. Where the building line is prescribed after the building has been partially erected on the old site, it is too late for the urban authority to interfere. *Ibid.*

A portion of a building was within alignment area about two and a half feet at one side and six feet at the other end. The external masonry wall was demolished and pillars and door frames and doors were erected. Parts of the floor and parts of the side wall came within alignment area on the street side. The flooring and side wall within alignment area were renewed:

Held, that the owner of the house took down a material portion of the projecting part of his building projecting beyond the regular line of the street as determined on for the future within the meaning of S. 174. *Cf.* 1930 Sindh 20; 120 I. C. 85.

Terms for bringing forward.—When a building behind the regular line is ordered to be brought forward the land under the projected building becomes the property of the owner of the building and unless any terms are agreed he cannot be made to pay the price of the land included in the building. 43 Bom. 181; 43 I. C. 404.

Time for action.—The committee may take action under this section before any building plans have been filed with the committee for the erection of the building fallen down or taken down. If no such action is taken before, the committee may take such action at the time of sanctioning the building or at any time before the building is begun to be erected.

Motive for action under the Act.—There is nothing in the City of Bombay Municipal Act which prescribes the frame of mind in which the municipal commissioner is to exercise the powers given by S. 297 of the Act, or which restricts the objects for which he is to exercise them to the mere regulation of the street in question or to the creation or preservation of a regular line in it. "Preservation of Regular Line in Public Streets," the heading to the group of sections beginning with S. 297, does not limit the exercise of the power given by the express words of the Act.

For the purpose of building a bridge in order to carry a street over a railway line the municipal commissioner wished to acquire additional land on a side of the street, and so he first prescribed a regular line of the street, under S. 297 of the City of Bombay Municipal Act and then under S. 299 acquired a part of the appellant's land which fell within the line:

Held, that the exercise of the powers was within the terms of the Act and that the appellant was entitled to compensation for the land acquired under S. 301 of the Act and not under the Land Acquisition Act. *Cf.* 48 I. C. 63.

174-A. Notwithstanding any thing contained in sections 172, 173, or 174, or in clause (u) of section 188, and subject to any general or special order that the local Government may make in this behalf if any street, being the property of the local

Special provisions regarding streets belonging to Government,

Government and not having been transferred by it, vests in local Government —

- (a) the committee shall not, in respect of such street, grant permission to do any act the doing of which without the written permission of the committee is punishable under section 172 or section 173 or allow any building to be set forward under the provisions of sub-section (2) of section 174, except with the sanction of the local Government which may be given in respect of a class of cases generally or in respect of a particular case;**
- (b) the committee shall, if so required by the local Government, exercise the power conferred upon it by sub-section (2) of section 172 or sub-section (2) of section 173 or subsection (1) of section 174 or clause (u) of section 188 or any bye-law made in exercise of the power conferred by clause (u) of section 188 in respect of any encroachment or overhanging structure on or over such streets, or any materials, goods or articles of merchandise deposited on such street, or any fence, post, stall or scaffolding erected or set up in respect of any building or part of a building which projects beyond the regular line of such street.**

Notes.

This is a section newly introduced by S. 66 of the Punjab Amendment Act, III of 1933.

Before the introduction of this section the Government found itself unable to control movable or immovable encroachments permitted by committees. Even in cases where such encroachments were made without permission of the committee Government found itself unable to remove such encroachments if the committee refused to take action under S. 172 or 173. As the law existed before there was nothing to prevent committees to permit encroachments as contemplated under S. 172 or 173; Government could only take action by suit. There was a sort of dual control regarding streets which vested in Government and the powers of committees over streets whether vested in them or reserved by Government under S. 56 was absolute; Government wanted that in sanctioning encroachment on streets vested in them the committees or owners should ask their permission and though the committees respected the rights of Government the sanction was sometimes granted in ignorance of the

rights of Government. Again the committees had absolute right of composition and the encroachment erected without sanction could be condoned. To avoid these difficulties this section has been introduced.

The committees cannot now sanction encroachments contemplated under Ss. 172-174 or S. 188 (u). Any sanction granted without previous permission will not be binding on Government and the committee shall have to arrange for its removal if so required by Government.

Clause (u) of S. 188.—This clause empowers committees by bye-laws to regulate the conditions on which and the periods for which permission under S. 172 (1) and 173 (1) may be granted.

175. The committee may, subject to the payment of reasonable compensation, by notice, require the owner or occupier of any building *within a period of not less than six weeks, to be specified in such notice, to remove or alter any balcony, projection, structure or verandah, erected with the sanction of the committee, overhanging, projecting into or encroaching on any street or into or on any drain, sewer or aqueduct therein.*

Removal
or alteration
of any balcony,
projection or structure,
etc. on
payment of
compensation

Notes.

S. 92 (5) of the old Act.

Recent changes.—This section has been substituted by S. 67 of the Punjab Amendment Act, III of 1933. The present section differs from the old section in the addition of words in italics and the omission of the words, "In cases to which the provision of section 173 do not apply."

The result is that this section only applies to encroachments sanctioned under S. 172. They can be removed after sanction. It was so held even before the present amendment. Encroachments sanctioned under this section can be removed on payment of compensation, *vide* P. R. 104 of 1916. Encroachments built without sanction can only be dealt with under S. 172 (2). If the encroachment has not been removed within three years even though made or erected or re-erected without permission, compensation will have to be paid. The result is that encroachments made with the sanction of the committee and encroachments made without permission but three years old can only be removed on payment of compensation.

The power of municipal committees to deal with encroachments made or erected or re-erected without permission has been curtailed.

Analogous Law.—

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| <p>S. 233, Bengal District Municipal Act, 1884.</p> <p>Ss. 235 & 241, Bengal Municipal Act, XV of 1932.</p> <p>S. 200, Behar and Orissa Municipal Act, 1922.</p> <p>S. 143 (3), Bombay Municipal Boroughs Act, 1925.</p> <p>S. 113 (3), Bombay District Municipal Act, III of 1901.</p> <p>Ss. 308 (2), 309 & 315, Bombay</p> | <p>City Municipal Act, III of 1888.</p> <p>S. 299 (3), Calcutta City Municipal Act, III of 1923.</p> <p>S. 222 (2), Madras City Municipal Act, 1919.</p> <p>S. 182 (2), Madras District Municipal Act, V of 1920.</p> <p>S. 164, Rangoon City Municipal Act, 1922.</p> <p>S. 211 (proviso), U. P. Municipalities Act, 1916.</p> |
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Tender of compensation.—In 4 Lah. 158 (1924 Lah. 89) it is laid down that tender of compensation must accompany the notice under S. 175.

The committee must make a tender of reasonable compensation to the person to whom notice under S. 175 to demolish his building on the ground of encroachment is given before he can be called upon to demolish the structure. It is immaterial whether the question is raised in criminal or civil suit. 1929 Lah. 763; 121 I. C. 424.

See also 35 All. 375 where it has been held that it is not necessary for the committee to mention in the notice the amount of compensation or its willingness to pay the same and a settlement of the question of compensation was not a condition precedent to the giving of notice.

In a Madras case on the corresponding provision of the Act it was held that the provision gives a right of compensation to the party aggrieved where the making of the projection did not contravene any provision of the law. The remedy of the aggrieved party where the projection has been unlawfully removed by the council is by a suit for compensation and not by a suit for injunction. 4 I. C. 828.

In the corresponding provisions of the old Act, *vide* S. 92 (5), or on cases of similar provisions it was held that payment of compensation was not a condition precedent. 24 P. R. 1890 Cr.; P. R. 90 of 1898.

The section now makes it clear that the payment of compensation is a condition precedent for action under S. 175.

The court which should decide the question of compensation and its quantity.—In case of dispute, the matter will have to be decided under Land Acquisition Act. *Cf.* 36 I. C. 912.

Suit for declaration.—A suit for declaration that the encroachment is more than three years old or was built with

sanction will lie when the committee denies that the encroachment is either not three years old or was not erected with permission of the committee, but such a suit cannot contain a further prayer that the court should fix the amount of compensation. The court is precluded to grant such a relief by S. 224. Cf. 36 I. C. 912 P. C.

Presumption as regards old encroachments.—Where a *pial* is found to be existing beyond living memory for forty or fifty years at least, it is *prima facie* sufficient proof that the *pial* is private property and burden lies on the municipality to show that it stood on land that was not private property. 8 Mad. 64.

Where the land under a thatch and on which certain *adahs* (uprights) had been constructed by a trader in bamboos, was alleged to be part of the public street but it was found that the *adahs* and *chappar* were old and the accused had been in exclusive possession for many years:

Held that the onus was on the municipal committee to show that the public had a right of way over the land and that it was part of a public street. P. R. No. 11 of 1904 Cr.

Law of Limitation and powers under this section.—There are conflicting rulings as regards the powers of the committees to require removal of encroachments in existence over thirty years. In this section or in the corresponding sections in the municipalities Acts of other provinces there are no restrictions as regards the powers of the committees over encroachments of whatever standing. In some of the Madras cases, however, where the encroachment has existed for over thirty years and whole of the cubic space of the street has been effectually occupied, it has been *held* that the space ceases to be a part of the street and hence the committee cannot require the removal.

In the case reported in 38 Mad. 456, 20 I. C. 956, the committee issued a notice under S. 168 of the Madras District Municipalities Act, IV of 1884. S. 168 corresponds to S. 175 of the Punjab Act. In this case it was *held* that as the whole cubic space had been effectually occupied and acquired by adverse possession the whole of the space ceases to be a street and the committee has no power to remove the encroachment; this result, however, was not arrived at without some hesitation. The case reported in 17 I. C. 158, 38 Mad. 6 was distinguished on the ground that the encroachment could not relate to the whole of the cubic space. It was *held* that the capacity of a person in hostile occupation to acquire rights which would affect the public was not affected though the committee could not by any act of their own give

up the rights of the public. Cf. 49 I. C. 93 which, however, is under the special provisions of Calcutta City Act.

The view propounded in 38 Mad. 456 and 20 I. C. 956 was doubted in 47 Mad. 716; 1925 Mad. 64; 81 I. C. 894.

The fact that the encroachment which is objected to has been in existence for twelve years or more, does not debar the committee to take action under Ss. 172 and 175: 38 Bom. 15; 21 I. C. 313. Where a verandah has been standing on a part of a public street for over thirty years, the site becomes the property of the person to whom the verandah belongs by operation of S. 28 and Article 146-A of the first schedule to the Limitation Act. In such a case the municipality have no power to issue a notice under S. 122 (corresponding to S. 175 of the Punjab Act) of the Bombay District Municipal Act for removal of the verandah: 58 I. C. 326. When an encroachment over a drain did not interfere with the use of the drain as a drain, no adverse possession could be claimed. 55 I. C. 493.

Removal of obstructions.—Under the Municipal Act the municipality has power to have all obstructions in a street removed whether the obstructions were placed there lawfully or not. The Act makes a distinction between movable obstructions and immovable obstructions. The former, besides being punishable can be summarily removed under S. 173 (2). The latter can be removed after giving notice to the owner or occupier. No compensation is claimable with respect to removal of immovable obstructions erected without permission. In case of obstructions erected with permission or otherwise lawfully in existence for more than three years the power of removal is subject to the payment of compensation.

Where a projection does not overhang a street but overhangs a private street or property the municipal committee has no jurisdiction to pass an order for its demolition and if an order is passed it may be called into question in a civil court. 1925 All. 234; 85 I. C. 761.

The object of the section is not to empower the municipality to compulsorily acquire the private property but its scope is limited to authorising the municipal bodies in the public interest to cause obstructions and encroachments to be removed. 47 Mad. 716; 1925 Mad. 68; 81 I. C. 924.

Power of removal of projections, jurisdiction of civil courts.—A civil court is not competent to discuss the advisability of a municipal board's action and has no power to interfere with it if it is shown that the board acted within its powers. The powers of the municipal committee as to the removal are not

limited to projections or structures as have been unlawfully made without the written permission of the committee.

The municipal committee have full authority under this section to issue notice ordering the removal of any projection or structure made with the previous sanction of the committee, but in such a case the committee is bound to make reasonable compensation for any damage caused by the removal. Cf. 3 I. C. 516.

The power of removal without compensation of projections is limited to cases of altogether new structures and does not extend to structures taking exactly the place of pre-existing structures. 6 I. C. 431.

Where a committee has sanctioned the erection of a verandah on a site which is municipal property, it can require its demolition under S. 175 on payment of compensation. Distinction between old S. 95 and new pointed out. 104 P. R. 1916, 36 I. C. 599.

The condition precedent for action under S. 175 is that the site under the encroachment should be proved to be a part of the street. Where a latrine had existed for 55 years in a street close to a house and it was not shown that the site was part of the street and where the committee had treated it as a part of a private property no action can be taken under S. 175. 44 I. C. 46.

S. 175 gives ample power to a municipality to give notice requiring the removal of a balcony overhanging a public road. It is not necessary that the committee should give reasons for the notice and should tender compensation along with the notice to the person who may be damaged by the removal of the balcony. 20 I. C. 405.

A sunshade over-hanging a drain is a projection and can be ordered to be removed under this section without proof that it interferes with the repairing or proper management of the drain. 30 I. C. 683.

A structure or projection erected without permission at a time when the Municipal Act then in force required permission for such a structure or projection would fall under S. 172 (2) and could be ordered to be removed without payment of any compensation if not more than three years old.

Under the Municipal Act, a municipality has power to have all obstructions in a street removed whether the obstructions were placed there lawfully or not, the only distinction which the Act draws is between obstructions erected without

permission and those which are lawfully in existence. The latter class of obstructions can be removed subject to the payment of compensation. *Cf.* 19 Bom. 212.

The power of the municipality in ordering the removal of encroachment is not affected by the fact that the person served with the notice has acquired a prescriptive right to the encroachment by adverse possession. Thus the construction of a *pial* over a drain by a house-owner is a user by him adverse to the municipality and twelve years' adverse enjoyment (before 1900) extinguishes the right of the municipality to the space occupied by the *pial*, and 60 years' adverse enjoyment extinguishes the right of the Government; but the municipality has under this section the statutory right to demolish the *pial* as "an encroachment," notwithstanding the existence of a prescriptive title as against it and the courts have no jurisdiction to restrain the demolition by an injunction. 23 Mad. L. J. 479; 17 I. C. 158. *See*, however, Notes under head "Limitation."

Recourse to courts for removal of encroachments on roads.

—Sections 172 to 175 lay down a scheme relating to the removal of projections which show how little a householder can by recourse to the civil court resist the removal of even an old platform projecting over public drain if municipal commissioners decided upon such removal and proceeded in accordance with S. 175 or 172 (2). Permanent injunction against the removal is so much opposed to the scheme that even temporary injunction cannot be granted especially where the obstruction has already been removed on the ground that under the Act, the householder would otherwise be deprived of the right to it although he may succeed in establishing his claim. *Cf.* 1929 Pat. 613; 120 I. C. 30.

Power with regard to projections, etc., constructed with permission.—As Ss. 172 and 175 stand at present, the power seems to extend equally to projections, etc., erected with the written permission of the committee. However, in a case arising under Act XIII of 1884 it was held otherwise. In that case the accused, with the permission of the municipal committee, accorded since the passing of the Municipal Act, 1884, built certain steps in front of his house. After the permission had been given, the Deputy Commissioner discovered that the committee was not competent, without the sanction of the commissioner, to grant permission to build anything encroaching upon public land. Consequently the permission given was considered unlawful by the committee, and they desired in supersession of their previous order to revoke that permission, and accordingly issued notice to accus-

ed to remove the steps with a tender of compensation. On his failure to comply with the notice he was prosecuted but was acquitted by the Chief Court which held that the prosecution could not lie. Assuming that the structure was of the kind described in S. 89 [=Ss. 172 and 175 of Act III of 1911] of the Act, it was built with the permission in writing of the committee and was therefore expressly excluded from provisions of S. 89, clause (1), and was a lawful structure. Clause (2) of the section cannot be construed as relating to structures lawfully erected under clause (1) so as to entitle the committee by a summary notice to require their removal or alteration. And the proviso to clause (2) is clearly inapplicable to a structure erected since the passing of the Act. 6 P. R. 1891 Cr.

Power to prevent re-erection of projections.—It has been held that the right of a person to rebuild a *chajja* pulled down is not indefeasible, but must come to an end as soon as the committee chooses to exercise their powers under Ss. 174 or 172 and 175—a matter entirely within their discretion and in which they are not liable to be controlled by civil courts: P. R. 90 of 1898; 3 I. C. 516. Under the existing amended provision so far as over-hanging structures are concerned re-erection requires written permission though under the old law compensation could be claimed under S. 175 if the committee refused re-erection.

Jurisdiction of civil courts to control the powers of committees. See P. R. 90 of 1898.

Power to revoke sanction before the encroachment or projection is actually built or rebuilt.—It is obvious that section empowers the committees to revoke sanction after it has been availed of. There is no bar to committee revoking it before it has been availed of. In this case no damage having arisen, no compensation will be claimable unless the revocation will necessitate some alteration in the scheme of building owing to such revocation, in which case compensation will have to be paid.

176. The committee may attach to the outside of any building brackets for lamps in such manner as not to occasion any injury thereto or inconvenience.

Power to
attach brac-
kets for
lamps.

Notes.

S. 88 of the old Act.

Analogous Law:—

S. 145, Bombay Municipal Boroughs Act 1925.	S. 190, Cantonment Act, II of 1924.
S. 115, Bombay District Muni- cipal Act, III of 1901.	S. 96, Central Provinces Muni- cipal Act, II of 1922.
S. 87, Burma Municipal Act, III of 1898.	S. 218, U. P. Municipalities Act, 1916.

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under this section can be delegated under S. 33 (a).

Destroying
irection-
osts, lamp-
osts, etc.

177. Whoever, without being authorized by the committee, defaces or disturbs any municipal direction-post, lamp-post or lamp or extinguishes any municipal light in any public place, shall be punishable with fine which may extend to ten rupees.

Notes.

S. 168 of the old Act with slight alterations.

Analogous Law:—

S. 151, Bombay Municipal Boroughs Act, 1925.	S. 118 (1) (a) (xi), Cantonment Act, II of 1924.
S. 121, Bombay District Municipal Act, III of 1901.	S. 203, Central Provinces Municipal Act, II of 1922.
S. 331, Bombay City Municipal Act, III of 1888.	S. 172 (3), Madras District Municipal Act, IV of 1884.
S. 177, Burma Municipal Act, III of 1898.	S. 261, U. P. Municipalities Act, 1916.

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Bill-stick-
ing without
permission.

178. Whoever, without the consent of the owner or occupier or other person for the time being in charge, affixes any posting bill, notice, placard or other paper or means of advertisement against or upon any building, wall, tree, board, fence or pale or writes upon, soils, defaces or marks any such building, wall, tree, board, fence or pale with chalk or paint or in any other way whatsoever, shall be punishable with fine which may extend to twenty rupees.

(2) Notwithstanding anything contained in Section 228 a court may take cognizance of an offence under sub-section (1) of this section upon the complaint of the owner or occupier or other person in charge of the property in respect of which such offence is alleged to have been committed.

Notes.

S. 168-A of old Act.

Recent changes.—Clause 2 has been added by S. 63 of the Amendment Act, III of 1933 while the existing clause

has been numbered as clause 1. The addition of this clause will empower owners and occupiers or persons in charge of Government buildings to take action under this section without recourse to municipal committee.

Analogous Law:—

S. 147, Bombay Municipal Boroughs Act, 1925.	Municipal Act, III of 1888.
S. 118, Bombay District Municipal Act, III of 1901.	S. 178, Burma Municipal Act, III of 1898.
Ss. 328 & 328-A, Bombay City	S. 118 (1) (a), (x) Cantonment Act, II of 1924.

Bills or posters are sometimes affixed on pavements or street surface. There is nothing to prevent such a practice though it is a practice fraught with danger as horses shy at such bills or posters.

179. (1) The committee may cause a name to be given to any street, and to be affixed on any building in such place as it may think fit, and may also cause a number to be affixed to any building; and in like manner may, from time to time, cause such names and numbers to be altered.

Names of
streets and
numbers of
buildings.

(2) Whoever shall destroy, pull down or deface any name or number affixed to any street or building under this section, or put up any different name or number from that put up by order of the committee, shall be punishable with fine which may extend to twenty rupees.

Notes.

S. 89 of the old Act.

Analogous Law:—

Ss. 215 & 216, (2), Bengal Dis- trict Municipal Act, 1884.	S. 178, Burma Municipal Act, III of 1888.
S. 244, Bengal Municipal Act, XV of 1932.	S. 193, Cantonment Act, II of 1924.
S. 184, Behar and Orissa Munici- pal Act, 1922.	Ss. 95 & 204, Central Provinces Municipal Act, II of 1922.
S. 146, Bombay Municipal Boroughs Act, 1925.	Ss. 228 & 299, Madras City Muni- cipal Act, 1919.
S. 116, Bombay District Muni- cipal Act, III of 1901.	Ss. 189 & 190, Madras District Municipal Act, V of 1920.
S. 327, Bombay City Municipal Act, III of 1888.	S. 218, U. P. Municipalities Act, 1916.

180. The committee may, where it appears to it to be necessary for the prevention of danger to life or property, by public notice, prohibit all persons from stacking or collecting timber, wood, dry grass, straw or other inflammable materials, or placing mats or thatched huts or lighting fires in any place or within any limits specified in the notice.

Inflammabl
materials.

Notes.

S. 103 of the old Act.

Analogous Law:—

- S. 400, Bengal Municipal Act, XV of 1932.
 S. 273, Behar and Orissa Municipal Act, 1922.
 S. 151 (n), Bombay Municipal Boroughs Act, 1925.
 S. 105, Burma Municipal Act, III of 1898
 S. 122, Cantonment Act, II of

1924.

- S. 148, Central Provinces Municipal Act, II of 1922.
 S. 261, Madras City Municipal Act, 1919.
 Ss. 195 & 222, Madras District Municipal Act, V of 1920.
 S. 259, U. P. Municipalities Act, 1916.

S. 121 deals with places where inflammable materials are stored for trade, this section regulates the storage of such materials for any purpose whatsoever.

Collection of firewood.—A baker collecting firewood in excess of his requirements is breaking this rule. Rat. Un. Cr. C. 793 (1895).

roofs and
 ernal walls
 to be
 de of in-
 am a b l e
 terials

181. The committee may direct that within certain limits to be fixed by it, the roofs and external walls of huts or other buildings shall not be made or renewed of grass, mats, leaves or other highly inflammable materials without the permission of the committee in writing; and the committee may, by written notice require any person, who has disobeyed any such direction to remove or alter the roofs or walls so made or renewed as it may think fit.

Notes.

S. 90 of the old Act.

Analogous Law:—

- S. 236, Bengal District Municipal Act, 1884.
 S. 323, Bengal Municipal Act, XV of 1932.
 S. 271, Behar and Orissa Municipal Act, 1922.
 S. 121, Bombay Municipal Boroughs Act, 1925.
 S. 94, Bombay District Municipal Act, III of 1901.
 S. 349, Bombay City Municipal Act, III of 1888.

- S. 105, Burma Municipal Act, III of 1898.
 S. 121, Cantonment Act, II of 1924.
 S. 147, Central Provinces Municipal Act, II of 1922.
 S. 233, Madras City Municipal Act, 1919.
 S. 195, Madras District Municipal Act, V of 1920.
 S. 257, U. P. Municipalities Act, 1916.

Disobedience of the notice will be punishable under S. 219.

Shall be made.—These words have been held to mean “shall be constructed” and do not mean “shall be composed of.”

The mere existence of walls or huts composed of inflammable materials does not in the absence of proof that the accused constructed them constitute the offence. 13 I. C. 832.

Renewed—The word includes also repairing. 19 Mad. 241; and rethatching. 1 Weir 732-b.

When a person has once obtained permission under S. 181 for putting up a structure of inflammable materials, he cannot be prosecuted for not obtaining that permission every year. Cf. 1928 Mad. 846; 51 Mad. 870.

The essence of the offence is the act of making or reconstructing the structures, not merely that of maintaining an already constructed building in existence. Cf. 1927 Mad. 501; 50. Mad. 760.

Bamboo mats.—These are inflammable materials. 1 Weir 733.

182. (1) Whoever, without the permission of the committee, pickets animals or collects carts on any street, or uses any street as a halting place for vehicles or animals of any description or as a place of encampment, or causes or permits animal to stray, shall be punishable with fine which may extend to twenty rupees.

Picketing
animals and
collecting
carts.

(2) Any animal found picketed, tethered or straying on any public street without the permission of the committee may be removed to a pound by any officer or servant of the committee or by any police officer.

Notes.

S. 166 of the old Act. The words "contrary to the orders" have been replaced by "without the permission".

Recent changes.—S. 182 has been renumbered as 182 (1) and clause 2 has been added by S. 69 of the Municipal Amendment Act, III of 1933.

In clause 1 the word 'street' has been retained while powers under clause 2 have only been confined to public streets. Like S. 173 (3) powers of removal to a pound have been granted to police or municipal officers or servants.

Analogous Law:—

S. 169, Bombay Municipal Boroughs Act, 1925.	Act, III of 1898.
S. 137, Bombay District Muni- cipal Act. III of 1801.	Ss. 118 (1) (a) viii, 118 (1) (i), 118 (3) and (4).
S. 116, Bombay City Municipal Act, III of 1888.	S. 210, Central Provinces Muni- cipal Act. II of 1922.
Ss. 164 & 174, Burma Municipal	Ss. 255-6 & 265, U P Munici- palities Act, 1916.

Executive Officers Act.—The powers conferred upon the committees under clause (1) of this section shall not be

[exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Power under S. 182 (1) can be delegated to Medical Officer of Health under S. 33 (b).

Driving
vehicles with-
proper
lights.

183. (1) Whoever drives or propels any vehicle not properly supplied with lights in any street during the period from half an hour after sunset to half an hour before sunrise shall be punishable with fine which may extend to fifty rupees.

(2) Whoever, in driving, leading or propelling a vehicle along a street, fails without reasonable excuse—

(a) to keep to the left, or

(b) when he is passing a vehicle going in the same direction, to keep to the right of that vehicle,

shall be liable to a fine which may extend to twenty rupees.

Exception.—This sub-section shall not apply to a municipality wholly or in part situated in a hilly tract.

Notes.

S. 159 of the old Act. Clause (2) had been added by Amendment Act, II of 1923, while clause 1 has been substituted by S. 70 of Amendment Act, III of 1933.

Before amendment S. 183 (1) read as follows:

183 (1) Whoever drives any vehicle after dark in any street, unless the vehicle is properly supplied with lights or there is sufficient moonlight to render light unnecessary shall be punishable with fine which may extend to twenty rupees.

The amendment of this clause makes for clearness. Sufficiency of moonlight was a vague expression. The punishment has been raised from rupees twenty to fifty. In clause (2) the fine has been retained.

Analogous Law:—

S. 350, Bengal Act, III of 1884.	Ss. 200 & 201, Central Provinces
S. 253, U. P. Municipalities Act, II of 1916.	Act, II of 1922.
S. 162, Burma Act, III of 1898.	S. 120, Cantonment Act, II of 1924.

Beating
drums, etc.

184. Whoever, in contravention of any general or special prohibition issued by the committee without the permission of the committee, beats a drum or tomtom, blows a horn or trumpet or beats or sounds any brass or other instrument or utensil, shall be punishable with fine which may extend to twenty-five rupees.

Explanation.—In the case of bands each individual member of such band shall be punishable under this section.

Notes.

This is a new section and has been taken from N.W.P. and Oudh Municipality Act, I of 1900.

Analogous Law:—

S. 174, N.W.P. and Oudh Act, I of 1900.	1903.
<i>Cf.</i> S. 120, C. P. Act, XVI of	S. 118 (g), Cantonment Act, II of 1924.

When no general or special orders have been issued playing of music is no offence. 5 C.P.L.R. 92.

Drum.—*Tabla* is not a drum or high sounding instrument. 1924 Pat. 377.

185. Whoever discharges fire-arms or lets off fire-works, fire-balloons or detonators, or engages in any game, in such a manner as to cause, or be likely to cause, danger to persons passing by or dwelling or working in the neighbourhood, or risk of injury to property shall be punishable with fine which may extend to twenty rupees.

Discharging
fire-arms etc

Notes.

S. 160 of the old Act.

Analogous Law:—

S. 350, Bengal District Municipal Act, 1884.	1924.
S. 163, Burma Municipal Act, III of 1898.	S. 216, Central Provinces Municipal Act, II of 1922
S. 125, Cantonment Act, II of	S. 262, U. P. Municipalities Act, 1916.

186. Whoever quarries, blasts, cuts timber or carries on building operations in such a manner as to cause, or to be likely to cause, danger to persons passing by or dwelling or working in the neighbourhood, shall be punishable with fine which may extend to fifty rupees.

Quarrying
blasting, cut-
ting timber
or building

Notes.

S. 165 of the old Act.

Analogous Law:—

S. 235, Bengal District Municipal Act, 1884.	S. 197, Cantonment Act, II of 1924.
S. 156, Bombay Municipal Boroughs Act, 1925.	S. 327, Central Provinces Municipal Act, III of 1922.
Ss. 123, 125 & 126, Bombay District Municipal Act, III of 1901.	S. 263, Madras City Municipal Act, 1919.
S. 382, Bombay City Municipal Act, III of 1888.	S. 221, Madras District Municipal Act, V of 1920.
S. 169, Burma Municipal Act, III of 1898.	S. 260, U. P. Municipalities Act, 1916.

Power to
levy fees at
fairs.

187. A committee may, with the previous sanction of the Deputy Commissioner, or, if the Deputy Commissioner is a member of the committee, of the Commissioner, levy small fees from each person attending a fair on which the committee incurs expenditure under Section 52 (2) (j) and from persons exposing goods for sale and all persons plying any occupation for gain (except water-carriers, scavengers, and others employed in connection with the fair) for defraying the cost of sanitary arrangements, watch and ward and the like.

Notes.

This is a new section. Cf. S. 143 (e) of the old Act.

Analogous Law:—

S. 156, Madras District Municipal Act, V of 1920.	S. 298, List 1—J (e), U. P. Act, 1916.
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CHAPTER X.

BYE-LAWS.

General bye-laws

188. A committee may, and shall if so required by the local Government, by bye-law,—

- (a) render licenses necessary for proprietors or drivers of vehicles, or animals kept or plying for hire within the limits of the municipality, and fix the fees payable for such licenses and the conditions on which they are to be granted and may be revoked, and may by such conditions provide among other things for a minimum breadth for wheel tyres and for a minimum diameter of the wheels;
- (b) limit the rates which may be demanded for the hire of any carriage, cart or other conveyance, or of animals hired to carry loads or persons, or for the services of persons hired to carry loads or to impel or carry such conveyances, and limit the loads which may be carried by any animal, or carriage, cart, or other conveyance, plying for hire, within the limits of the municipality;

Provided that no bye-law made under clause (a) or clause (b) by the committee of a municipality in which the Hackney Carriage Act, 1879, is in force shall apply to any vehicle to which that Act applies;

Provided also that the operations of any bye-law made under the provisions of clause (a) or clause (b) or of any rules made under the Hackney Carriage Act, 1879, may, with the sanction of the local Government, be extended to—

- (i) any railway station,
 - (ii) the whole or any part of any road so far as such road is situate within ten miles of the limits of the municipality;
 - (iii) the whole or any part of any road leading from the limits of any one municipality or notified area to the limits of any other municipality or notified area, if the distance between the said municipalities or notified areas does not exceed fifty miles and the committees of the said municipalities or notified areas consent to the extension of such bye-law;
- (c) provide for the proper registration of births, marriages and deaths, and for the taking of a census;
- (d) fix, and from time to time vary, the number of persons who may occupy a building or part of building, which is let in lodgings or occupied by members of more than one family, or which is situated within such congested bazar areas as may be specified in the bye-law; and provide—
- (i) for the registration and inspection of such buildings,
 - (ia) *for the licensing of hotels and lodging-houses and for the fees payable for such licenses and the conditions on which they may be granted or revoked,*
 - (ii) for promoting cleanliness and ventilation in such buildings,
 - (iii) for the notices to be given and the precautions to be taken in the case of any infectious or contagious disease breaking out in such buildings,
 - (iv) for the scavenging, removal and disposal of all rubbish, filth, nightsoil, sullage or sewage in such buildings,
 - (v) in the case of hotel, serai and lodging-house keepers and the secretaries of residential clubs for the maintenance of registers, in such form as the committee may prescribe, of visitors and lodgers, and
 - (vi) generally for the proper regulation of such buildings;

(e) provide:—

- (i) *for the inspection and proper regulation of encamping grounds, pounds, serais, bakeries, aerated-water factories, ice-factories, dhobis' ghats, flour-mills, food grain godowns, dispensing chemists' shops, slaughterhouses, and places licensed under Section 121,*
- (ii) **for the inspection and proper regulation of markets for the preparation and exhibition of a price current and for fixing the fees, rents and other charges, to be levied in such markets,**
- (iii) **for defining the standard weights and measures to be used in the municipality and for the inspection of weights and measures under Section 207,**
- (iv) **for the holding of fairs and industrial exhibitions within the municipality or under the control of the committee, and for the collection of fees under Section 187,**
- (v) **for controlling and regulating the use and management of burial and burning grounds,**
- (vi) **for the supervision, regulation and protection from pollution of public wells, tanks, springs or other sources from which water is or may be made available for the use of the public, whether within or without the municipality,**
- (vii) **for the licensing, inspection and proper regulation of theatres and other places of public resort, re-creation or amusement;**
- (viii) **for the inspection and proper regulation of channels which are supplied with water from any canal to which either the Northern India Canals and Drainage Act, 1873 or the Punjab Miners Canals Act, 1905 applies,**
- (f) **require and regulate the appointment by owners of buildings or land in the municipality, who are not resident in the municipality, of persons residing within or near the municipality to act as their agents for all or any of the purposes of this Act or any rule thereunder:**
- (g) **where the collection of an octroi or terminal tax has been sanctioned fix limits for the purpose of**

collecting the same, and may prescribe routes by which animals or articles or both which are subject to octroi or terminal tax may be imported into the municipality or exported therefrom;

- (h) render licenses necessary for using premises as stables, cow-houses, or houses or enclosures for sheep, goats or swine, and regulate the grant and withdrawal of such licenses;
- (i) in any municipality where a reasonable number of slaughter-houses has been provided or licensed by the committee, control, regulate, or prohibit the admission within the municipal limits for the purpose of sale of the flesh (other than cured or preserved meat) of any cattle, sheep, goat or swine slaughtered at any slaughter-house or place not maintained or licensed under this Act, and may provide for the seizure, destruction or disposal otherwise of any flesh brought within municipal limits in contravention of any such by-law;
- (j) fix premises within the municipality in which the slaughter of animals of any particular kind, not for sale, shall be permitted and prohibit, except in case of necessity, such slaughter elsewhere within the municipality:

Provided that no such bye-laws shall apply to animals slaughtered for any religious purpose;

- (k) prohibit the letting off of fire-arms, fire-works, fire-balloons, bombs or detonators except (1) with the permission of the committee or of a municipal officer empowered to give such permission, (2) subject to such conditions as the committee may impose, and (3) on payment of such fees (if any) as may at any time have been fixed by the committee in that behalf;
- (l) regulate the making and use of connections or communications between private houses and premises and mains or service cables, wires, pipes, drains, sewers and other channels established or maintained, by the committee, under any of the provisions of this Act;
- (m) regulate the collection, storage, preservation from pollution, and use of rain-water, and the carrying out of the provisions of Sections 96 to 105;

- (n) regulate the posting of bills and advertisements, the position, size, shape and style of name-boards, sign-boards and sign-posts;
- (o) provide for, regulate, require or prohibit the construction, pattern of construction, maintenance and materials of boundary walls, hedges, and fences hereafter erected or re-erected so as to abut on a public street or upon property vested in the committee;
- (p) regulate or prohibit any description of traffic in the streets and provide for the reduction of noise caused thereby;
- (q) prohibit the storage, of more than a fixed maximum quantity of any explosive, petroleum, spirit, naphtha or other inflammable material in any building not registered or licensed under Section 121;
- (r) provide for the seizure and confiscation of ownerless animals straying within the limits of the municipality;
- (s) provide for the registration of all or any specified classes of dogs, and in particular and without prejudice to the generality of the foregoing—
 - (i) provide for the imposition of an annual fee for such registration;
 - (ii) require that every registered dog shall wear a collar to which shall be attached a metal token to be issued by the committee;
 - (iii) provide that any dog, not registered and wearing such token, may if found in any public place, be detained at a place to be set apart for the purpose, and will be liable to be destroyed or otherwise disposed of after a period to be specified in the bye-law;
- (t) render licenses necessary for hand carts employed for transport, or hawking articles for sale, and for the persons using such hand carts, and prescribe the conditions for the grant and revocation of such licenses.
- (u) regulate the conditions on which and the periods for which permission may be given under sub section (1) of Section 172 and sub-section (1) of Section 173, and provide for the levy of fees and rents for such permission; and
- (v) generally provide for carrying out the purposes of this Act.

Notes.

This corresponds to S. 143 of the old Act. Power has been given to frame bye-laws for several new matters.

The section has further been amended by Act II of 1923.

The following are the principal changes introduced by the said Act:—

- (1) Sub-clause (*iv*) has been added to clause (*d*).
- (2) In sub-clause (*i*) of clause (*e*) "food grain godowns, dispensing chemists' shops" have been added after "flour mills."
- (3) Sub-clause (*vii*) is a new addition to clause (*e*).
- (4) Clause (*g*) has been altered so as to make it applicable to terminal-tax as well.
- (5) In clause (*h*), the words "or swine" have been added and the words "regulate the grant and withdrawal of such licenses" have also been added.
- (6) Clauses (*t*) and (*u*) have been newly added and the clause (*t*) has been re-lettered as clause (*v*).

Recent changes.—S. 71 of the Punjab Amendment Act, III of 1933, has amended the Act and the amendment effected are indicated in italics.

Sub clause (*b*) was amended by S. 5 of Act XV of 1926. The amendments then made have been omitted and re-enacted in the same form.

In clause (*d*) a new sub-clause (*ia*) has been introduced for licensing of hotels and lodging houses.

In clause (*e*) (*i*) places licensed under S. 121 can now be regulated.

In clause (*e*) sub-clause (*viii*) was introduced by S. 5 of Act XV of 1926.

In clause (*m*) Ss. 96 to 105 have been substituted for Ss. 103 to 105, thus enabling the water supply of a committee to be regulated.

In clause (*p*) power for requiring the reduction of noise caused by traffic has been given to committees.

Clause (*t*) was first amended by S. 6 of the Punjab Amendment Act of 1925 and has further been amended by requiring hand carts used for transport of goods to be licensed and also enabling committees to license persons using such carts

Clause (*u*) was amended by S. 6 of Act of 1925, under which permission under S. 172 can also be regulated.

General remarks.—This is the principal section authorizing committees to frame bye-laws on various matters. As regards the validity of bye-laws *see* Notes under S. 3 (3).

Delegation.—When the legislature entrusts to some public body, it may be Executive Government or a corporation, the duty of making rules, such public body cannot relieve itself of the responsibility and depute other agencies to discharge the duty. The authority to make rules must remain in the hands to which it is entrusted. In cases where the charge relates to an alleged breach of a rule passed under an Act, care ought to be taken to specify the particular rule said to have been infringed. 17 Mad. 128.

The committee may by bye-laws etc.—The wording of section are not mandatory but enabling. The committee “may” not “shall” make bye-laws. 1930 Rang. 297.

Construction of enactments conferring powers.—In enactments which confer powers, and particularly in enactments which confer powers on public authorities, language of mere permission may not preclude the existence of a duty.

Where a statute directs the doing of a thing for the sake of justice or the public good, the word “may” is the same as the word “shall.” (*Rex v. Barlow, Salk 609 and Macdougall v. Paterson*, 11 C. B. 755, *Ref.*) 1930 Rang. 297.

The Government can now compel committees to frame bye-law.

<p>Cls. (a) & (b) - Analogous Law: Ss. 154-5, 326 and 327, Behar and Orissa Municipal Act, 1922. Ss. 183, 184 & 478 (3), Calcutta City Municipal Act, III of 1923.</p>	<p>Ss. 179 (g) and (h), Central Provinces Municipal Act, II of 1922. Ss. 298, List 1—H (c) (d), U. P. Municipalities Act, 1916. <i>English Law</i>:— S. 172, Public Health Act, 1875.</p>
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This will enable the committees to license the proprietors and drivers of all sorts of vehicles including hackney carriages where Hackney Carriages Act is not in force. Proprietors and drivers of motor vehicles can also be licensed under this clause. The mere fact that the motor vehicles are also regulated by a special statute does not prevent a municipal committee from adopting similar ordinances and regulations.

Kept or plying for hire within a municipality.—In the corresponding English Act (the Town Police Clauses Acts, 1847 and 1889) and other local Acts dealing with similar matters the words used are “standing or plying for hire.” It would appear the words used in S. 188 mean the same thing as kept or plying for hire. In fact “kept” has a wider meaning than “standing.”

Meaning of kept.—Motor cars brought by chance visitors within the municipality and not used in such municipality for more than short periods are not vehicles kept within the municipality. Before it can be found that such a vehicle is kept in the municipality it must be established that it is re-

tained—within the municipality for more than short periods. Such visitors are not liable to be convicted under S. 188. Cf. 1928 Oudh 306, 109 I. C. 368.

Plying for hire.—There are at least two possible definitions of the word “ply,” neither of which strains its proper use. To ply may be “to go or travel more or less regularly back and forth,” which is the sense in which it is said that a ship plies between London and Sydney. Or it may be “to wait regularly for business; to have one’s stand,” as might be said of a bootblack, who plies his trade at a street corner. A motor car can be used for both; it may travel regularly between London and Brighton carrying fare-paying passengers, in which it is certainly “plying” in the former sense, and for hire; and it may also take up its stand at a certain spot daily to pick up its passengers, in which case it “has its stand” and is “waiting regularly for business.”

Blackpool Board of Health v. Bennett, (1859) 28 L. J. M. C. 203, was a case of plying for hire with a licensed carriage contrary to a bye-law fixing certain stands. Defendant’s story was that he did not ply for hire, but was asked to be engaged, and consequently picked up the fare in the street. The court held that there was a plying for hire. A section of the private Act (S. 48 of 14 and 17 Viet. c. xxix) under which the bye-laws were made, gave power to regulate the conduct of proprietors and drivers of “hackney carriages, animals, bathing machines, or pleasure boats, plying within the district in their several employments.” Clearly the word “plying” in this instance signifies “waiting for business” or “seeking trade,” since bathing machines, at all events, do not “ply” between places. The London Hackney Carriage Act, 1831, under which the well-known decision of *Case v. Storey*, (1868) L. R. 43 Ex. 319; 48 L. J. M. C. 113, was given, uses the words “standing or plying for hire” in a public street, and the whole tenor of the Act, as well as of the judgments, points to the construction of “standing still or driving about in search of a fare.” Observations of Kelly, C. B., are worthy of note. “A standing or plying for hire within the meaning of the Act of Parliament must mean a standing or plying for hire by any one of the public who may think fit to hire the cab in question.”

As an illustration of what does not amount to plying for hire with an unlicensed carriage the case of *Cavill v. Amos*, (1900) 64 J. P. 309, is in point. The appellant, the proprietor of both licensed and unlicensed carriages, was on a stand with a licensed carriage, when he was hailed by a party of nine persons who wished to drive together. The licensed carriage was licensed to hold only five. The appellant said

he had a waggonette at his stables which would hold them all and the party all went to his stables and got into an unlicensed waggonette and were driven by the appellant. He was summoned under S. 45 of the Town Police Clauses Act, 1847, for permitting an unlicensed hackney carriage to be used for plying for hire. The justices convicted him. The Divisional Court allowed the appeal. Channell, J., said there was no evidence of plying for hire with an unlicensed carriage. "In ordinary cases, in order that there should be a plying for hire, the carriage itself should be exhibited. It is, however, possible that a man might ply for hire with a carriage without exhibiting it, by going round touting for customers; that is, however, not the case. The appellant was touting for customers for his licensed carriage. He did not solicit persons to go in the waggonette in the first instance and therefore there was no plying for hire with the waggonette."

Cases sometimes arise in which a carriage, duly licensed in one area, is alleged to have plied for hire in another area, in which it is not so licensed. Where the Town Police Clauses Acts are in force, S. 3 of the Act of 1889 governs the matter. *R. v. Fletcher and others, ex parte Ansonia*, (1908) 72 J. P. 249, was an attempt to bring a carriage within the last exception in S. 3 of that Act, as "an omnibus starting from outside the prescribed distance, and bringing passengers within the prescribed distance, and not standing or plying for hire within the prescribed distance." The omnibus in question started its journey from outside the "prescribed distance," took up passengers, but made no charge for them while conveying them within the prescribed distance. The Divisional Court found that there was evidence of standing and plying for hire in the district, and upheld the conviction.

An omnibus coming from one district will not be required to be licensed in another, though used for bringing passengers into the latter unless it stands or plies for hire in the latter. An omnibus starting from outside the district and going to a point within the district where it waited from fifteen to twenty minutes for the purpose of taking up passengers, parcels, etc., for the return journey, was held not to come within the exception on the ground that it plied for hire within the district. *Dewhurst v. Eddles*, (1893) 57 J. P. 375; 9 T. L. R. 424.

Proprietors and drivers of carts and conveyances which bring goods or passengers from outside the municipal limits and do not wait for hire within municipal limits cannot be licensed under these rules unless the operation of these by-laws is extended under the proviso to this clause.

Licensing power—exercise of discretion to grant or refuse.—S. 6 of Bombay Act, VI of 1863, empowers the police commissioner in Bombay to grant licenses for public conveyances and provides that he may in his discretion refuse to grant any such license for any conveyance which he may consider to be insufficiently found or otherwise unfit for the conveyance of the public. It was *held* that the commissioner was bound to exercise his discretion in each case. This discretion is not an absolute one but one which is to be exercised after he has made himself acquainted with the conveyance to be licensed and has considered whether it as an individual carriage is fit for the conveyance of the public.

Where it appeared that the commissioner had approved of a certain pattern of victoria as a public conveyance and refused to license victorias which did not conform to that pattern: *Held* his refusal on that ground was illegal. An exercise of the power in the fetters of self-imposed rules purporting to bind the authority in all cases would not be within the section. 27 Bom. 307. See also 1933 Rang. 37 noted on p. 629.

To ply for hire means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or travel in it on payment of the usual fares and also to offer its use on payment to any member of the public thereby soliciting custom. 1929 Lah. 422; 10 Lah. 505.

The accused, owners of a car, had a shop at D for which supplies from P were taken in car. They got orders for some provisions from other shopkeepers at D and executed them by purchasing goods at P in their own names and carried them by their lorry to D. They charged higher rates for the goods than those prevailing at P as they had to carry the goods from P to D for delivery to customers. They were charged for plying their car for hire under S. 3 and convicted:

Held, that the accused did not solicit custom or invite the general public to use their car for hire and so their conviction was illegal. In order to constitute "plying for hire" there must be a general invitation by the person in charge of the vehicle to the members of the public to make contracts with him for carriage in the vehicle. (Case law discussed.) 1931 Lah. 569, 132 I. C. 702.

Clause (b).—When hired within municipality the clause does not restrict the area of the service. When a cart is hired within a municipality it is bound to observe the bye-laws under this clause. The fact that part of the service may have to be done outside the municipal area will not absolve the owners or drivers from compliance with the bye-laws.

The place of plying for hire.—The act of plying for hire can only be done at the place and time that the hire is effected. Therefore a person who lets out his car for hire in a municipal town need not obtain a license from the District Board in which area the municipal town is situated if the car travels beyond municipal limits and traverses any of the district board roads. 1928 Mad. 166; 51 Mad. 527.

S. 166* (1) of Madras Local Board Act, 1920 is intended to make persons who use the road of a district board for making money by using motor vehicles upon it pay for that privilege. The first part is intended to make persons who ply a motor vehicle for hire within the limits of the district board pay for it by taking out a license, and the latter part of it is intended to make persons who pick up passengers at separate fares outside the area of the district board also take out a license.

What is meant by "separate fares" is individual fares as distinguished from a fixed amount for the whole vehicle. 1930 Mad. 441.

Owner and servant both liable for plying for hire without license.—The owner and the driver of a bus are both liable for plying without license under S. 166, Madras Local Board Act. The contention that the servant is merely obeying the orders of his master is no ground for relieving him of his liability when clearly the section covers the case of a person plying for hire, whether it is his own car or not. 1927 Mad. 1195.

Plying a vehicle without license. License refused without good reasons. The fact that the person authorised to grant or refuse the license did not exercise his discretion reasonably in refusing to grant the license is not one that could afford answer to a charge that the accused has done something for which license was necessary and for which he had no license. 1925 Mad. 476; 48 M. L. J. 132; 86 I. C. 57.

Responsibility of licensee for acts of servants.—Where a driver of a motor car plied a car for hire without license it was *held* the licensee is in law responsible for all that their servants do. The principle is that the act of the servant of a licensee is the act of his master and that it is the licensee who does everything that is done under cover of the license. It is he who undertakes to conform to the terms of it and to be responsible that no breach of it takes place. Where therefore a conductor of a motor plied the motor on a road on which the licensee is prohibited to ply, *held* that the licensee is liable. 50 Mad. 913; 1927 Mad. 612.

* The section renders plying motor vehicles for hire on district board roads or using such vehicles for carrying passengers at separate fares without license punishable.

Motor driving without owner's knowledge by an unlicensed driver.—Where a particular intent or state of mind is not of the essence of an offence a master can be made criminally liable for his servant's acts, if an act is expressly prohibited but not otherwise; and he cannot be so made liable if the act provides for a liability for permitting or causing certain things unless it can be shown that the act was done with the master's knowledge and assent, express or implied.

Where a motor car is driven by a person, who has no license, without the knowledge of the owner, the owner cannot be convicted nor can he be convicted on the ground that his licensed driver had given the unlicensed driver permission to drive. A servant has no implied authority to engage a stranger to do work on behalf of his master so as to render the master liable for the stranger's acts or default except perhaps in a case of necessity which term comprises only well-known exceptional cases. 47 C. L. J. 460; 1928 Cal. 410, 110 I. C. 326.

Hackney carriage license.—The commissioner of police must issue license to a rickshaw whether it is old or new if it complies with the conditions as laid down under S. 23 of the Rangoon Hackney Carriage Act, 1917 and is found fit for public use and if the commissioner has not issued the license up to the maximum numbers as fixed by him.

And therefore, where he does not exercise the discretion as vested in him, a writ of mandamus can be issued directing him to issue such a license. 1933 Rang. 37.

Levy of fees for license.—There are several provisions in the Act which empower the committees to levy fee for license for certain permissions as, for instance, Ss. 121, 188 (a), 188 (e) (ii) etc. It is not the intention of the legislature to arm municipal committees with power to impose a charge for a license which might extend to any amount for which sanction of the local Government could be obtained. The intention was merely to give power to charge a fee which would save the committee from being out of pocket by reason of the duties and liabilities imposed on it by the act of supervision and regulation of matters for which license is required. Cf. 1927 Rang. 183.

Bye-laws imposing fee or charges.—Although the courts ought to support if possible the bye-laws and the administrative acts of a public representative body it is a well settled rule of law that all charges upon the subject must be imposed by clear and unambiguous language because in some degrees they operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation. 1927 Rang. 183.

Clause (c).—Analogous Law:—

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| <p>Ss. 346-9, Bengal District Municipal Act, 1884.</p> <p>Ss. 396 and 498, Bengal Municipal Act, XV of 1932.</p> <p>S. 344, Behar and Orissa Municipal Act, 1922.</p> <p>S. 61 (1) (j), Bombay Municipal Boroughs Act, 1925.</p> <p>S. 48 (f), Bombay District Municipal Act, III of 1901.</p> <p>S. 461 (g), Bombay City Municipal Act, III of 1888.</p> | <p>S. 142 (a) & (b), Burma Municipal Act, III of 1898.</p> <p>S. 179 (j), Central Provinces Municipal Act, II of 1922.</p> <p>S. 349 (23), Madras City Municipal Act, 1919.</p> <p>Ss. 286 & 306 (23), Madras District Municipal Act, V of 1920.</p> <p>S. 298, List 1—J (b), U. P. Municipalities Act, II of 1916.</p> |
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Very few municipalities have framed bye-laws for the proper registration of marriages or for taking of census.

Clause (d).—Analogous Law:—

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| <p>S. 460, Bengal Municipal Act, XV of 1932.</p> <p>S. 343, Behar and Orissa Act, 1922.</p> <p>S. 148, Bombay District Municipal Act, III of 1901.</p> <p>Ss. 384, & 478(38), Calcutta City Municipal Act, III of 1923.</p> <p>S. 179 (j), C. P. Municipal Act, II of 1922.</p> | <p>Ss. 279 and 340 (11), Madras City Municipal Act of 1919.</p> <p>Ss. 238 & 306 (11), Madras District Municipal Act, V of 1920.</p> <p>S. 298, List 1—I (e) (f), U. P. Municipalities Act, 1916.</p> |
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English Law:—

- Ss. 76, 77, 78, 80 & 90, Public Health Act, 1875.

Buildings let in lodgings and tenement buildings.—

Bye-laws may be framed for regulating not only lodging houses but also buildings called tenements used by members of more than one family. The committee may also limit the number of occupiers of buildings in certain specified congested or overcrowded areas. The scope of the bye-laws under S. 188, clause (d) is wider in certain respects than the scope of S. 90, Public Health Act, 1875.

The proper construction of the term “lodgings” is a matter of some difficulty, as there is no statutory definition of the term which is directly applicable to the case. A lodger may be described as a tenant with the right of exclusive use of part of a house, the landlord, by himself or agent, retaining general dominion over the house itself. The effect, however, of judicial decisions is to show that the expression in a legal sense is susceptible of various interpretations.

The expression is often used loosely of a person who enters into a contract for food and lodging with the keeper of a boarding house without stipulating for the exclusive occupation of a particular room or rooms, though a separate

apartment for sleeping may in fact be given to him. Of this, *Wright v. Stavert*, (1860) 29 L. J. Q. B. 161, is an example. But it is most commonly used to designate a person who takes part of, or rooms in, a house, the landlord or his agent residing also on the premises and supplying him with "attendance." In *Allan v. Liverpool Overseers*, (1874) L. R. 9. Q. B. 180, Blackburn, J., points out that "a lodger in a house, although he has the exclusive use of rooms in the house in the sense that nobody else is to be there, and though his goods are stowed there, is not in exclusive occupation . . . because the landlord is there for the purpose of being able, as landlords commonly do in the case of lodgings, to have his own servants to look after the house and the furniture, and has retained to himself the occupation, though he has agreed to give the exclusive enjoyment of the occupation to the lodger." Sir G. Jessel, M. R., in *Bradley v. Baylis*, (1881) 8 Q. B. D. 195 illustrates the meaning of the expression. The decision in that case was on the Registration Acts, but the illustrations are of general application. He says: "First of all, take the case of a lodger. It seems to me as to unfurnished lodgings (and I will only deal with unfurnished lodgings as it is the only class of cases with reference to which questions are likely to arise), where the owner of a house does not let the whole of it, but retains a part for his own residence, and resides there, and where he does not let out the passages, staircase and outer door, but gives to the "inmates" (I use that term for my present purpose) merely a right of ingress or egress and retains to himself the general control, with the right of interfering—I do not mean an actual interference but a right to interfere, a right to turn out trespassers, and so on; then I consider that such owner is the occupying tenant of the house, and the inmate, whether he has or has not the exclusive use of the room, is a lodger. That is one extreme case. Now I take another case, where the landlord lets out the whole of the house into separate apartments, and lets out each floor separately, so as to demise the passages, reserving simply to each inmate of the upper floors the right of ingress or egress over the lower passages, but parts entirely with the whole legal ownership for the term demised, and retains no control over the house: there, in my opinion, the inmates are occupying tenants, and are capable of being rated as such. That is an extreme case on the other side. There will be an immense number of intermediate cases, which, as I said before, can only be dealt with as they arise. Take such a case as the first of those before us. Does it make any difference that the inmates have latch-keys to the outer door and also keys to the inner door? I think not. I

think they are still lodgers notwithstanding. Does it make any difference that the landlord does not reside there personally, but has resident servants, who occupy, on his behalf, part of the house? I think not. I think that the inmates are still lodgers. On the other hand, suppose a landlord does not demise the whole of the house, but everything in it that can be demised, except the staircases and passages, etc., as to which he gives the inmates the right of ingress and egress, but exercises no control over, and does not reside in, the house. I think the inmates are occupying tenants. Here, again, does the fact of the landlord repairing or paying rates and taxes make any difference? I think not. Of course he has a right to enter to make such repairs, but still, in my opinion, that does not prevent the occupier being in rateable occupation."

When rooms in a house are let out to separate occupiers the mere fact that the landlord resides in a separate set of rooms in the house does not of itself convert occupiers from inhabitant occupiers into lodgers. But such occupiers are merely lodgers when the resident landlord has a right of control over their rooms. *Kent v. Fittall*, (1906) 1 K. B. 60; 69 J. P. 428.

Occupied by members of more than one family.—The expression "house let in lodgings or occupied by members of more than one family" occurs also in S. 94 of the Public Health (London) Act, 1891, and in a case under that section it was held that block of artisans' dwellings, where the landlord did not reside, and which was divided into tenements occupied severally by different families, was not such a house, and therefore the authority had no power to make bye-laws for the regulation of the building: *Weatheritt v. Cantlay*, (1901) 2 K. B. 285; 65 J. P. 614. In a later case it was decided that the following was such a house, *viz.*, an ordinary six-roomed house not specially constructed to be let in separate tenements, which had common staircase and common front door which was always kept open; on each floor were two rooms let to and occupied by a separate family; and the landlord did not reside on the premises or have any representative residing there. *Kyffin v. Simmons*, (1903) 67 J. P. 227; 1 L. G. R. 381.

Tenement building, whether a lodging-house in its entirety.—If a building is divided into separate and independent dwellings or tenements and those dwellings or tenements are such that the occupants of them do not to any extent use or occupy the building as a whole in common, then, even if separate tenements or some of them are actually used as a lodging-house, the building as a whole does not thereby

become a lodging-house, and only those separate and independent tenements which are used as lodging-houses need to be registered and licensed.

If a building as a whole is let in lodging or otherwise occupied to any extent in common by members of more than one family then it is a lodging-house and is subject to the bye-laws. If there is no such common occupation of the building as a whole but there is such common occupation of a particular part of it then that particular part is a lodging-house but the building as a whole is not a lodging-house. If neither the building as a whole nor any part of it separately is occupied to any extent in common by members of more than one family, neither the building nor any part of it is a lodging-house. 1924 Rang. 109, 81 I. C. 960.

Registration.—The keeper of a common lodging-house, having fulfilled the necessary preliminaries under S. 78 of the Public Health Act, applied to be registered under this section, and the authority passed a resolution that his house should be registered. The clerk did not carry out this resolution, and neither the keeper nor his house was formally registered. Eight months afterwards the authority resolved that his house should not be registered, and two months later they prosecuted him for keeping a common lodging-house without being registered. It was *held* that for the purposes of the Act the resolution of the authority constituted registration and that the justices were right in refusing to convict. *Coles v. Fibbens*, (1884) 52 L T. 358.

Ventilation etc.—A bye-law requiring the owners of lodging-houses “to make such alterations in the construction and in the sanitary appliances and water-supply of the building as may seem necessary for keeping the building in a wholesome condition” is not *ultra vires*, as the framing of such a clause is authorised by sub-clause (ii) of S. 188 (d) which mentions as one of the objects of such bye-laws to be to promote cleanliness and ventilation in lodging-houses, and rules for promoting ventilation must by their nature provide for the necessary structural alterations when the purposes of the bye-law cannot be attained without them.

A notice to be valid must be reasonable and possible to comply with. It is not reasonable to require a house-owner to remove the latrines to a site outside and quite separate from the main building when no such site is available, nor to require him to close the latrines without the provisions of any other. 20 I. C. 740.

Bye-laws not *ultra vires*.—Clause (c) of bye-law 19 framed by the Rangoon Municipality requiring the owners of lodging-

houses "to make such alterations in the construction and in the sanitary appliances and water-supply of the building as may seem necessary for keeping the building in a wholesome condition" is not *ultra vires*, as the framing of such a clause is authorized by sub-clause (iii) of S. 142 (d) which mentions one of the objects of such bye-laws to be to promote cleanliness and ventilation in lodging-houses and the rules for promoting ventilation must by their nature provide for the necessary structural alterations when the purposes of the bye-law cannot be attained without them. 20 I. C. 740.

Lodging-house.—A lodging-house need not be let in lodgings; it is still a lodging-house if it is occupied to any extent in common by members of more than one family.

The persons living in the lodging-house are lodgers whether they pay rent or not and the owner of the lodging-house receives them when he allows them to occupy the building. 44 I. C. 674.

A bye-law enjoined that "Premises used for hotels, lodging houses, boarding houses, choultries, rest houses, restaurants, eating-houses, cafes, refreshment rooms, or coffee-houses or to which the public are admitted for the consumption of any food or drink shall be constructed of masonry or of such other durable materials, as may be approved by the chairman and no part thereof shall be constructed of inflammable materials."

Held, the bye-law is badly drafted as it does not prohibit anyone from doing anything. It does not authorize the municipal chairman to issue to anyone any notice of any kind nor does it say that failure to obey a notice is punishable. Hence a person who uses for hotels etc., any premises not constructed as mentioned in Bye-law No. 1 will not be liable to penalty. 1933 Mad. 416.

Clause (e) (i). Analogous Law:—

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| S. 414, Bengal Municipal Act, XV of 1932. | Ss. 390, 478 (42) & 478 (44) & (46), Calcutta City Municipal Act, III of 1923. |
| S. 291, Behar and Orissa Municipal Act, 1922. | Ss. 179 (b) & 180 (f), Central Provinces Municipal Act, II of 1922. |
| S. 172, Bombay Municipal Boroughs Act, 1925. | Ss. 308 & 449 (14), Madras City Municipal Act, 1919. |
| S. 140, Bombay District Municipal Act, III of 1901. | S. 306 (14), Madras District Municipal Act, V of 1920. |
| Ss. 399, 406 & 461 (n), Bombay City Municipal Act, III of 1888. | S. 298 List 1—F. (d), U. P. Municipalities Act, 1916. |
| S. 142 (g), Burma Municipal Act, III of 1898. | |

Scope of power to regulate.—An authority which is frequently, if not generally, conferred upon municipal corporations, is the power to regulate occupations, businesses, and other matters within the city. This power is sometimes conferred without the use of any other or qualifying words, but it is also frequently conferred in the form of authority to regulate, restrain, and license or other terms of similar import. Whether the power be conferred simply as power “to regulate,” or the power to regulate be granted in conjunction with other powers not importing an absolute prohibition, it may be laid down as a general rule, subject to some exceptions, that the power to regulate, does not authorize the absolute prohibition of the subject matter upon which the authority is to be exercised; much depends upon the nature of such subject-matter as to the scope of the power. In the exercise of the power to regulate, a city may exercise all reasonable forms of restraint over the thing regulated so long as it stops short of actual prohibition. To regulate is to govern by, or subject to, certain rules or restrictions. It implies a power of restriction and restraint certainly within reasonable limits as to the manner of conducting specified business, and also as to the building or erection in or upon which the business is to be conducted. By virtue of the power to regulate, it has been *held* that the city council may by ordinance prohibit the carrying on of a business within certain specified portions of the city. By virtue of a similar power to regulate, it has been *held* that it is within the authority of the common council reasonably to limit the manner in which an act may be done by prohibiting one or more methods. By the weight of authority, although the decisions are not uniform, another form of regulation which may be prescribed by virtue of the power to regulate is the power to require a license to follow particular trades or occupations with an accompanying prohibition in the event of failure to procure the license. The implied authority to license which flows from authority to regulate confers authority on the city council to require the licensee to pay a reasonable license fee, but it cannot, under the guise of a licence or license fee or by virtue of its power to regulate, impose a tax upon the occupation.

It may be taken as firmly established that the states and municipalities under legislative sanction possess the power, because the states have never surrendered it, to prescribe such regulations as may be reasonably necessary and appropriate for the protection of the public health and comfort. And for that purpose a state has the power in some cases to prohibit, and in other cases to regulate, trades and

occupations. Such occupations as are inherently dangerous and annoying to the community, or pertain to the public service, or are affected by a public use, are in the nature of privileges instead of rights. Some of them may be prohibited altogether, some within certain territorial limits, and others beyond a limited number, under the police power of the state, which arises from and rests upon the community right of self-protection and self-preservation. There are other occupations that may not be prohibited at all, and over which the power of the state, either through the legislature, or through legislative power delegated to municipal corporations, is confined to regulations for the general safety and welfare of the community. But there is a limit to the power of regulation. If a regulation, enacted by competent authority avowedly for the protection of the public safety, health, and welfare, has a real and substantial relation to these objects, and violates rights secured by the fundamental law and interferes with the enjoyment of individual rights beyond the necessities of the case, such regulation exceeds the legislative authority of the state and cannot be sustained. And it has been said that certain trades and occupations are so innocuous and innocent that they cannot be made the subject of regulation, either by the state or by a municipal corporation acting under delegated authority. But this statement must always be taken subject to the general rule that even these trades and occupations are subject to such regulations in the exercise of the police power as may be properly directed against the individuals composing the community at large. In other cases, regulations directed against special features of certain trades, but having no real and substantial relation to, or necessity for, the protection of the public safety and welfare, have been declared to be invalid, although the trades themselves might be regarded as properly requiring regulation in other respects in the public interest. Dillon, pp. 1000 to 1009.

In the Punjab Municipal Act power to license and power to regulate is separately and specifically given, and hence power to regulate cannot be used to include power to license.

Regulation may mean restriction as to time and place. See *Municipal Corporation of City of Toronto v. Virgo* (1896) A. C. 88 at pp. 93-4 cited in 28 Bom. 253.

Clause (e) (i). Grain godowns — Grain.—The word “grain” would not include rice paddy without husks or broken rice, and godown for storage of rice cannot be regulated under this provision. Grain is confined to natural products

of the earth untreated except by gathering. 1926 Mad. 251; 49 Mad. 219.

The term "grain" is confined popularly to seed or cereal plants and pulse or *dal* is not included in grain. It is therefore not necessary to take out a license for storing *dal*, and no offence is committed if *dal* is stored without license. 1931 Cal. 706, 132 I. C. 900.

Slaughter-houses.—See Notes under S. 167.

Bye-laws restricting the slaughter of certain specified class of animals cannot be regarded as *ultra vires* as regulating matters not pertaining to health. It is not health alone the preservation of which the Municipal Act has in view. Safety, convenience and welfare of the public are also the objects of the Act. If with the object of securing the welfare of the public the committees seek to restrict wholesale slaughter of specified class of animals we do not think the bye-laws will be *ultra vires*.

Clause (e) (ii)—Analogous Law :—

S. 335, Bengal District Municipal Act, 1884.	City Municipal Act, III of 1923.
Ss. 402 & 414, Bengal Municipal Act, XV of 1932.	Ss. 300, 301, 304, 308 & 349 (18), Madras City Municipal Act, 1919.
S. 276, Behar and Orissa Municipal Act, 1922.	Ss. 260-8 & 306 (18), Madras District Municipal Act, V of 1920.
S. 61 (a) Bombay Municipal Boroughs Act, 1925.	Ss. 125 & 129, Rangoon City Municipal Act, 1922.
Ss. 48 (a) (i) & 140, Bombay District Municipal Act, III of 1901.	Ss. 241, 298-List 1—F. (a)(d), U. P. Municipalities Act, 1916.
Ss. 399, 406, 407 & 461 (k), Bombay City Municipal Act, III of 1888.	S. 165, Punjab District Board Act, 1883.
Ss. 401, 405 & 478 (8), Calcutta	

Markets.—A market is a place appointed by public authority where all sorts of things necessary to the subsistence or for the convenience of life are sold; or, in other words, it is a designated place in a town or city to which all persons can repair who wish to buy or sell articles there exposed for sale. A market is a public place for buying and selling. The authority to establish and regulate markets falls within the police power of the state, which is delegated to municipal corporations. The power of the public authority to inspect and control the sale of articles of food intended for human consumption being conceded, the object being the preservation of the health of the community, the power exists in municipal corporations to establish and regulate and control markets within

their respective local jurisdictions. The right to establish and regulate cannot be used to create a monopoly of the right to sell, or so as to deny the right of consumers and producers of market supplies to deal with each other directly; and all regulations must be reasonable, uniform and not in restraint of trade.

Meaning of market.—A market is a place set apart for the meeting of the general public of buyers and sellers freely open to any such, to assemble together, where any seller may expose his goods for sale and any buyer may purchase. It is not the owner of the premises but the person who keeps open the market that is presumably the person who collects or has collected for him the fees levied in the market for the exposure and sale of the goods who is punishable. 1925 Mad. 1095, 87 I. C. 973.

Fair.—Under the English common law, a market is a franchise conferring a right to hold a concourse of buyers and sellers. Though strictly applicable to the right itself, the term is often, and not incorrectly, applied to the concourse of buyers and sellers or to the market-places, or to the time of holding the market. The word “fair” conveys a like idea. Market is the term generally used for a concourse held often enough to meet the daily or weekly needs of a locality, while the term “fair” is usually employed for a concourse of buyers and sellers, which arises once or upon few occasions only during the year. Every fair is a market, but every market is not a fair. A market is generally holdable more frequently than a fair; and the derivation of fair (from the Latin word *feria*, which signifies a holiday) is marked by the amusements which are usually provided when fairs are held. These amusements have sometimes swamped the business of buying and selling, and their tendency has been to tarnish the fair name of franchise.

Applicability of English Law.—English law relating to market has no application to land-owners who have a right to hold markets or bazaars upon their lands and the holding of markets would, it seems, include the levying of tolls or market dues. At the same time Government is empowered to introduce legislation with respect to markets as markets are matters concerning public. 1932 Nag. 159; 141 I. C. 450.

Right to hold market on one's own land—Grant of Franchise. See 29 All. 740.

There is no legal objection to the holding by any person of a “hat” or market, whenever he may please, provided he does so on his own land and in such a way as not to be a nuisance to neighbouring land-holders who have equal rights

with him. In England the market rights are derived from royal charter grants or prescription. 1907 A. W. N. 248, 4 All. L. J. 728; 29 All. 740.

Regulation and supervision of market.—The power to regulate or supervise does not include a power to license. Cf. 1927 Rang. 183.

Classes of markets.—Markets are of two kinds: public and private. Public markets are those markets which are the property of municipal corporations and which are maintained and controlled by them. Private markets are those markets which are owned by private individuals, but which are licensed and kept under the control of municipal corporations.

Public markets.—Municipal corporations are enjoined to own public markets. For that purpose they can acquire lands, and after having acquired lands, they can build and maintain the same. A public market may not be established so as to interfere with any rights, powers or privileges in the nature of a franchise enjoyed within the district by any person, unless that person consents.

Private markets.—There is no legal objection to the holding by any person of a market, whenever and wherever he may please, provided that he does so on his own land and in such a way as not to be a nuisance to neighbouring land-owners who have equal rights with him. Aiyangar's Law of Municipal Corporations, pp 649-650.

Private market establishing or keeping a private market.—The accused with the sanction of the municipality erected a structure designed to be let as small shops abutting on a street. The shops were let to tenants. There was no inter-communication between the shops. Each tenant was independent of the other. Majority of tenants sold fruits. The shops looked like stalls or booths: *Held* that the structure was nothing more than a collection of shops and its user did not constitute a private market. Fruits are articles of human food. 52 Bom. 780; 1928 Bom. 413.

Private market converted into public market.—Any consideration of vested rights being divested cannot avail, the courts have to administer law and not to make it. 1932 Nag. 105; 139 I. C. 374.

Regulation of use of places as markets.—This power of regulation will not enable committees to prohibit the use of private shop for selling articles; use of the shop will not be a market. 11 Bom. 106.

Private property is used as a market when it is used as a public place for buying and selling. 29 Mad. 185.

Fees, rent and other charges.—These correspond to tolls charged on sale of articles and to stallage charged for occupation of space in the market. Broadly speaking, toll is a sum payable upon a sale in the market, while stallage is a sum payable in respect of the exclusive occupation of a portion of the soil: *See Northampton (Mayor of) v. Ward*, (1745) 2 Stra. 1238, and *Swindon Central Market Co., Ltd. v. Panting*, (1872) 27 L. T. 578. Rent for space in the market is only another name for stallage, though, perhaps, it is more usually applied when the accommodation is of a more fixed and substantial character than a movable stall, or when the hiring is for a more extended period, as for a week, month, or longer.

Municipalities are not empowered to make rules which would enable them to confiscate private rights without making compensation or to treat as nuisances acts which are not in law or with regard to public health or convenience capable of being considered nuisances.

The clause gives to municipal boards power to make bye-laws for prohibiting the establishment of markets, *i. e.*, to prevent new markets being established, and to give them power to control the maintenance of existing markets or of markets which might be established with their sanction. *Cf.* 19 All. 313.

Clause (e) (iii).—*Analogous Law* :—

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| Ss. 415 & 417, Bengal Municipal Act, XV of 1932. | Municipal Act, III of 1888. |
| S. 48 (e), Bombay District Municipal Act, III of 1901. | S. 179 (d), Central Provinces Municipal Act, II of 1922. |
| Ss. 418 & 461 (o), Bombay City Municipalities Act, 1916. | S. 298, List 1—H. (a), U. P. Municipalities Act, 1916. |

Standard weights.—The clause permits committees to define standard weights and measures for use in municipalities. If bye-laws have been framed, then any body using weights or measures not of prescribed standards will be guilty of breach of the bye-laws. *Cf.* Ss. 265-7 of Indian Penal Code which punish the fraudulent use of false weights and measures.

Clause (e) (iv).—*Analogous Law* :—

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| S. 258, Behar and Orissa Act, 1922. | S. 142 (f), Burma Municipal Act. |
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Fairs.—*See Note under Markets.*

Clause (e) (v).—*Analogous Law* :—

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| S. 350 (d), Bengal District Municipal Act, 1884. | Municipal Act, III of 1923. |
| S. 61 (1) (k), Bombay Municipal Act, 1925. | S. 179 (l), Central Provinces Act, II of 1922. |
| S. 48 (g), Bombay District Municipal Act, III of 1901. | Ss. 249 (22), 325 & 326, Madras City Municipal Act, 1919. |
| S. 441, Bombay City Municipal Act, III of 1888. | Ss. 284 & 306 (22), Madras District Municipal Act, V of 1920. |
| Ss. 478 (65) & (66), Calcutta City | |

Bye-laws regarding burial and burning grounds.—See Notes under S. 107.

Clause (e) (vi).—*Analogous Law*:—

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| S. 350(b), Bengal District Municipal Act, 1884. | S. 478 (32), Calcutta City Municipal Act, III of 1923. |
| S. 355, Bengal Municipal Act, XV of 1932. | S. 179 (l), Central Provinces Municipal Act, II of 1922. |
| S. 61 (1)(p), Bombay Municipal Boroughs Act, 1925. | S. 349 (3), Madras City Municipal Act, 1919. |
| S. 48 (k), Bombay District Municipal Act, III of 1901. | S. 306(3), Madras District Municipal Act, V of 1920. |
| S. 461 (b), Bombay City Municipal Act, III of 1888. | S. 235, U. P. Municipalities Act, 1916. |

Bye-laws under S. 188 (e) (vi) have for their object the protection of public health by empowering committees to regulate, protect and supervise public wells and other sources of water supply for use of the inhabitants.

Clause (e) (vii).—*Analogous Law*:—

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| S. 282, Behar and Orissa Municipal Act, 1922. | S. 478(45), Calcutta City Municipal Act, III of 1923. |
| S. 137, Burma Municipal Act, III of 1898. | S. 149, Central Provinces Municipal Act, II of 1922. |

Clause (e) (vii) empowers committees to regulate theatres, cinemas and other places of public resort or amusements.

Clause (f).—Under bye-law XVIII framed under this clause the appointment of an agent by a non-resident house owner of Simla must be notified to the engineer secretary of the municipal committee.

No person can be recognised as an agent unless and until his appointment is so notified.

Failure to notify such appointment renders the owner liable to the penalty provided in clause (4) of the bye-law. P. R. 21 of 1911 Cr.; 14 I. C. 193.

Clause (h).—*Analogous Law*:—

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| S. 263, Bengal District Municipal Act, 1884. | S. 478 (34), Calcutta City Municipal Act, III of 1923. |
| S. 372, Bengal Municipal Act, XV of 1932. | S. 135, Central Provinces Municipal Act, II of 1922. |
| S. 261 Behar and Orissa Municipal Act, 1923. | Ss. 282-4 & 349 (15), Madras City Municipal Act, 1919. |
| S. 61(1) (e), Bombay Municipal Boroughs Act, 1925. | Ss 245-7, Madras District Municipal Act, V of 1920. |

Where lessees keep horses in a stable, the owners cannot be held responsible for using the stable without a license. 25 Cal. 625.

Where license has been rendered necessary there must be regular user of the place for keeping more than a certain number of cattle, etc. Mere temporary user for such purpose will not render the license necessary. 30 Mad 220.

Bye-laws *ultra vires*.—The Municipal Committee of Delhi framed bye-laws under S. 188 (h) and in the bye-law the definition of an occupier was: "Occupier means the person who is responsible for the letting or sub-letting of the premises to the person in charge of animals and may include the owner."

The same term is differently defined in S. 3 (10) of the Act. It was held the bye-law was *ultra vires*. The definition of an "occupier" given in the bye-law made by the Delhi Municipality under S. 188 is inconsistent with the definition of the same term given in the Act itself and is therefore *ultra vires*. 1921 Lah. 135; 2 Lah. 237; 64 I. C. 132.

A bye-law must conform with the provisions of the enactment under which it purports to be made. A bye-law which differs materially from the Act, should not be enforced.

The English law as to the necessity of bye-laws being reasonable is applicable to bye-laws framed in the exercise of their statutory powers by municipal boards in India. 24 All. 439.

Licensing of stables.—Under S. 386* of Bengal Act, III of 1923, the discretion of the corporation in refusing license is absolute. It has therefore absolute power to refuse a license to any particular premises within a particular area even though the corporation has not excluded generally that area under S. 387. 1932 Cal 269.

Estoppel.—The granting of a license under the taxing sections such as S. 175 and S. 179 of Calcutta City Municipal Act does not have the effect of precluding the corporation from refusing to grant a further license under S. 386*. 1932 Cal. 269, 136 I. C. 638.

Liability of owner for use of premises by tenants.—Where a landlord leases out premises to a tenant on a monthly rent and such tenant in turn lets it out to a sub-tenant and it is not proved that the landlord, when letting out, permitted the tenant to use it for certain purposes which require a license, nor is it shown that the landlord could have prevented such use of the premises, the landlord cannot be held

*Cf. S. 121 of the Punjab Act.

liable for the use of the premises without any license within the meaning of bye-laws under S. 138 (h). 1931 Cal. 5.

S. 394 of Bombay City Municipal Act renders punishable the use without license of premises for keeping or allowing to be kept for cattle, horses, etc., for hire. Accused was joint owner of a place part of which was let out to several tenants. The tenants kept bullocks on the place, some in huts and some on the waste land. The bullocks were for hire but the place was not licensed by the committee under S. 394. Accused knew that bullocks were kept on the land. *Held* that the accused was guilty whether the bullocks were kept upon leased land or on waste land not leased out. Following *Regina v. Heyworth*, (1866) 14 L. T. N. S. 600, it was *held* that the owner uses the place for the prohibited purpose by letting it out for that purpose. License is not to the person but to the place and the penalty is imposed on every person who uses a place without license. 17 I. C. 529 ; 14 Bom. L. R. 835. Similarly in a case the accused let out certain premises to a tenant. For several years to the knowledge of the accused the premises were used by the tenant or his sub-tenants for the purpose of stabling bullocks in contravention of S. 394. In the lease given by the accused the tenant had undertaken not to use the premises for any purpose prohibited by the municipality. The accused was held guilty as despite the terms of the lease, he allowed the unwarranted use of the premises. 17 I. C. 532.

See however 2 Lah. 239 noted on p. 26.

Nuisance by stables.—Licence for using premises as stables does not justify the commission of nuisance to any resident in the locality. 48 Bom. 241 ; 1924 Bom. 241.

Creation of nuisance, private or public.—It may be that if a person keeps a very large number of horses and the locality is very thickly populated it may cause discomfort, nuisance and injury to health not only to the residents of two or three houses but of a large number of houses. In that case it would be a public nuisance: 1925 Bom. 458; 87 I. C. 771. *See* also 33 I. C. 192; 17 Bom. L. R. 1040 as to nuisance created by bullock carts and bullock stables and as to rights and remedies of neighbours.

Grant or refusal of licenses—Jurisdiction of court.—Discretion to grant a license includes power to refuse it, and the exercise of the said discretion cannot be controlled by a court of law. The court cannot substitute its own judgment for that of the local authority. Unless it is clear

beyond doubt that it is using its authority with some indirect motive and for a collateral purpose, not for the purpose for which the legislature has armed it with the power, the court cannot interfere with its discretion. All stables, cattle-sheds and cow-houses are under the control of the municipal authorities as regards their site, construction, materials and dimensions, and the municipal authorities may by written notice require that any stable, cattle-shed or cow-house be altered, paved, repaired, disinfected or kept in such a state as to admit of its being sufficiently cleaned or be supplied with water, or be connected with a sewer or be demolished; and if any stable, cattle-shed, or cow-house is not kept in the manner prescribed, the municipal authority may direct by a written notice that the same shall no longer be used as a stable, cattle-shed or cow-house. If the place is not regularly used as a cattle-yard, no license need be taken out. Aiyangar's "Law of Municipal Corporations" pp. 402-3.

Clause (i).—Analogous Law:—

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| S. 414 (e), Bengal Municipal Act, XV of 1932. | cipal Act, III of 1923. |
| S. 139, Bombay District Municipal Act, III of 1901. | S. 141, Central Provinces Municipal Act, II of 1922. |
| S. 412, Bombay City Municipal Act, III of 1888. | S. 126, Rangoon City Municipal Act, 1922. |
| S. 478 (51), Calcutta City Municipal Act, III of 1923. | S. 240 & 298 List I—F(e), U. P. Municipalities Act, 1916. |

Having regard to the provisions of S. 167 and bye-laws under clause (e) (i), this clause is very necessary and bye-laws under this clause may be combined with those under clause (e) (i). Without bye-laws under clause (i) the bye-laws under clause (e) (i) will not be of much use.

Clause (j).—This can only apply to slaughter of animals for private use when the animals are slaughtered neither for sale nor for religious purpose.

Clause (k).—Analogous Law:—

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| S. 350 (aa), Bengal District Municipal Act, 1884. | S. 179 (w), C. P. Municipal Act, II of 1922. |
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Cf. S. 185. Even permission contemplated under the bye-laws framed under this clause will not exonerate a person from prosecution under S. 185 if the fire-works, etc., are discharged in such a manner as is likely to endanger life or property.

Clause (l).—Analogous Law:—

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| S. 61 (1) (x), Bombay Municipal Boroughs Act, 1925. | Municipal Act, III of 1923. |
| S. 48 (r), Bombay District Municipal Act, III of 1901. | S. 349 (3) (d), Madras City Municipal Act, 1919. |
| S. 478 (9) and (10), Calcutta City Municipal Act, III of 1923. | S. 306 (5), Madras District Municipal Act, V of 1920. |

Clause (m).—Analogous Law:—

S. 61 (1)(p), Bombay Municipal Boroughs Act, 1925.	S. 48 (l), Bombay District Municipal Act, III of 1901.
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Clause (n).—Analogous Law:—

S. 478 (18), Calcutta City Muni- cipal Act, III of 1923.	S. 306 (23), Madras District Municipal Act, V of 1920.
S. 179 (x), Central Provinces Municipal Act, II of 1922.	S. 298 List 1—H (f) U. P. Muni- cipalities Act, 1916.

Clause (o).—Analogous Law:—

S. 185, Bihar and Orissa Muni- cipal Act, 1922.	S. 194, Cantonment Act, II of 1921.
S. 247, C. P. Municipal Act, 1922.	

When bye-laws have been framed, the notice requiring compliance with those bye-laws should be definite and should convey full information as to the requirements of the boundary walls to be erected or re-erected. Any notice defective in these respects need not be complied with.

Clause (p).—Analogous Law:—

350 (a), Bengal District Muni- cipal Act, 1884.	cipal Act, III of 1901.
S. 245, Bengal Municipal Act, XV of 1932.	S. 179 (u), Central Provinces Municipal Act, II of 1922.
S. 61 (1) (z), Bombay Muni- cipal Boroughs Act, 1925.	S. 346 (8) (c), Madras District Municipal Act, V of 1920.
S. 48 (c), Bombay District Muni-	S. 298 List 1—H (b), U. P. Muni- cipalities Act, 1916.

Traffic.—It is within the power of the legislature to regulate the traffic upon the streets of a city. Thus, it may, subject always to the legal rights of the abutters, exclude business traffic from a public street and direct that it be used for pleasure purposes only. It may delegate this power to the municipality. Ordinances reasonably regulating the traffic are legislative acts, which are not subject to judicial control. By virtue of delegated authority, the municipality may by ordinance limit and restrict the speed of vehicles in the streets of the municipality; may make other reasonable regulations as to the use of the streets and the avoidance of obstructions therein; may require vehicles using the city streets to be licensed; and it may require that vehicles using the city streets or waiting therein for passengers, shall obey the directions of the police officers stationed in the streets and public places. By virtue of the supervision and control of the streets vested by statute in a municipality, it has been held that it is within the power of the municipality to require that any vehicle carrying a heavy load shall use a particular portion of the street, or require vehicles carrying heavy loads to use wide tyres. Power to

make such ordinance "respecting streets, wagons, carts, drays, etc., as to the council shall appear necessary for the security, welfare, and convenience of the city," authorises an ordinance regulating the weight which wagons and other vehicles employed in the transportation of goods, wares, or produce of any kind shall carry through the streets of the city. In thus holding, the court admitted that "an ordinance which would operate as a total exclusion of the right of the citizen to pass over the streets of the city with his loaded wagon and team would be unreasonable and void, as against common right; but the ordinance in question merely regulates the exercise and enjoyment of the right, and is valid." Dillon, p. 1852.

The Municipal Board of Nainital passed a bye-law under powers conferred upon it by S. 118 (c) of Local Act I of 1900 to the following effect, namely: "No coolie whether bearing loads or not, no servant except in attendance on his master and no prostitute shall use the Upper North Mall at any time."

Held that as regards the words, "no servant except in attendance on his master" this was under the circumstances an unreasonable bye-law and the court declined to give effect to it. 24 All. 439.

The English law as to the necessity of a bye-law being reasonable is applicable to bye-laws framed in the exercise of their statutory power by municipalities. 24 All. 439.

See 51 I. C. 341 noted on p. 534. The municipal committee is entitled to close a street for a particular class of traffic. 50 I. C. 215.

Clause (q).—Analogous Law:—
S. 179 (r), C. P. Municipal Act, 1922.

Cf. The provisions of S. 121 under which places used as depot for trade in certain specified combustible materials have to be licensed, while places used as a store-house of explosive and other inflammable oils or spirits whether for trade or not are similarly to be licensed. Committees sometimes appear to confuse the provisions of these different sections and are not correct in not licensing places used for depot for trade in combustible materials unless the quantity exceeds a maximum limit fixed under these bye-laws.

Clause (r)—Analogous Law:—
S. 179 (v), C. P. Municipal Act, 1922. | S 298-List 1—H (h), U. P. Municipalities Act, 1916.

Forfeiture of animals at large; notice; legal proceedings:—

The right to denounce a forfeiture against animals running at large in a town or city, contrary to the provisions of ordinance forbidding it, must be plainly conferred or it will not be held to exist. This is in accordance with the rule of the English courts, that a statute will not be taken to invest, by implication, a municipal corporation with the extraordinary powers of forfeiting the property of the subject, and that if it be intended that any such power shall be given, it must be by express words to that effect. The courts agree in holding that when the power to denounce the forfeiture against such animals is given, there should be notice, either actual or constructive, or prior legal proceedings. The view of the courts will be best understood by referring to some of the cases upon the subject. In Mississippi, an ordinance authorising the seizure and sale of hogs running at large, without notice or trial, or opportunity for trial, and providing that one-half of the proceeds of the sales should go to the hospital and the other half to the city marshal, was held to be in violation of the constitutional provision that no person "can be deprived of his property but by due course of law," and securing right to a jury trial.

In North Carolina the general principle was declared that an ordinance of an incorporated town which authorizes the property of one man to be taken from him and given to another, without any notice to the owner or trial of his rights, was unlawful. The town authorities, under power given to make ordinances for the removal of nuisances and for the good government of the town, passed an ordinance to this effect: "That every hog at large in the said town shall be taken up and penned, and advertised to be sold on the third day: and unless the owner should pay the charges (specified in the ordinance) for taking up and keeping such hog, and a sale is effected, the money arising therefrom after paying the charges, shall be paid over to the owner of the said hog. The validity of this ordinance was drawn in question, and two points were ruled by the Supreme Court: (1) That the ordinance was reasonable, and the corporation, under the power above referred to, had authority to pass it; (2) That it sufficiently provided for notice to the owner by the impounding of the animal, and the three days' public advertisement, and that personal notice was not necessary. In a subsequent case in the same court a similar ordinance was sustained. It was objected that it was invalid, because it provided for no judicial decision condemning the property to be sold. This objection the

court regarded as insufficient, "since the owner may, if he choose, have a full investigation of the case by bringing an action of replevin as in any other case of distress." Dillon, pp. 958-60.

Stray animals are not generally ownerless, but if after notice they are not claimed within the time specified in the bye-laws, they will be presumed to be ownerless.

Clause (s).—Analogous Law:—

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|---|--|
| S. 153, Behar and Orissa Municipal Act, 1922. | 1922. |
| S. 179 (y), C. P. Municipal Act, | S. 298 List 1—H. (i)—(l) U. P. Municipalities Act, 1916. |

See also the provisions of S. 109 and 110 as regards mad and stray dogs.

Clause (t).—This is a new clause introduced by the Amendment Act, II of 1923 and the Punjab Amendment Act, III of 1933. Hand-carts kept or plying for hire for conveyance of goods can be regulated under clauses (a) and (b) of this section.

Hand-carts employed for transport or hawking articles can now be licensed and the persons using them will also require to be licensed.

Clause (u).—Analogous Law:—

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| Ss. 236 & 245, Bengal Municipal Act, XV of 1932. | Act, III of 1888. |
| S. 180, Behar and Orissa Municipal Act, 1922. | S. 478 (1), Calcutta City Municipal Act, III of 1923. |
| S. 90 (2), Bombay Municipal Boroughs Act, 1923. | S. 70, Central Provinces Municipal Act, II of 1922. |
| S. 70, Bombay District Municipal Act, 1901. | S. 163, Rangoon City Municipal Act, 1922. |
| S. 310, Bombay City Municipal | S. 293, U. P. Municipalities Act, 1916. |

This is also a new clause added by the recent Amendment Act, II of 1923, and the Amendment Act of 1925. This clause now expressly allows committees to charge rent of streets used for deposit of articles. The case reported in (1923) Lah. 272 is no longer good law.

Fees and rent.—These will now be recoverable under S. 81 of the Act.

Clause (v).—Analogous Law:—

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| S. 61 (1) (bb), Bombay Municipal Boroughs Act, 1925. | S. 298, List 1—H. (m), U. P. Municipalities Act, 1916. |
| S. 142 (t), Burma Municipal Act, III of 1898. | |

This is a general clause empowering committees to frame bye-laws on matters not specifically mentioned. Bye-laws under this clause will be of the class similar to those specifically mentioned. These bye-laws must have for their object to carry out the purposes of the Act.

Construction of the general grant of power.—Municipal charters, or incorporating acts, are sometimes silent as to the power to pass bye-laws or ordinances; and where this is the case, the municipal body has the power, incidental to all corporations, to enact appropriate bye-laws. Occasionally, the charter or incorporating act, without any specific enumeration of the purposes for which bye-laws may be made, contains a general and comprehensive grant of power to pass all such as may seem necessary to the well-being and good order of the place. More frequently, however, the charter or incorporating Act authorises the enactment of bye-laws in certain specified cases, and for certain purposes; and after this specific enumeration a general provision is added, that the corporation may make any other bye-laws or regulations necessary to its welfare, good order, etc., not inconsistent with the constitution or laws of the State. This difference is essential to be observed, for the power which the corporation would possess under what may, for convenience, be termed "the general welfare clause," if it stood alone, may be limited, qualified, or, when such intent is manifest, impliedly taken away by provisions specifying the particular purposes for which bye-laws may be made. It is clear that the general clause can confer no authority to abrogate the limitations contained in special provisions.

Such would undoubtedly be the proper construction if this were the only power given to the city to pass ordinances or bye-laws. It should then be somewhat liberally construed. But if such a general grant is given in connection with, or at the end of a long list of specific powers, perhaps so extended a construction might not then be due to it. The power conferred by the general welfare clause is or may be restricted by reference to other provisions of the charter or constituent Act.

Special and general grants of authority.—When there are both special and general provisions, the power to pass bye-laws under the special or express grant can only be exercised in the cases and to the extent, as respects those matters allowed by the charter or incorporating Act; and the power to pass bye-laws under the general clause does not enlarge or annul the power conferred by the special provisions in relation to their various subject-matters, but gives authority to pass bye-laws, reasonable in their character, upon all

other matters within the scope of their municipal authority and not repugnant to the constitution and general laws of the state. And it has been very properly held that a special grant of power to a municipal corporation to adopt ordinances on enumerated subjects connected with municipal concerns is in addition to the incidental power of the corporation. Ordinances cannot enlarge or change the charter or statute. Since all the powers of a corporation are derived from the law and its charters, it is evident that no ordinance or bye-law of a corporation can enlarge, diminish, or vary its powers. A similar rule obtains in England, where it is held that neither the King's charter nor any bye-law can introduce an alteration in rules which have been prescribed to a corporation by an act of Parliament. Bye-laws are in their nature strictly local and subordinate to the general laws. Dillon, pp. 921-3.

All bye-laws which have for their objects the carrying out of the purposes of this Act or the preservation, maintenance, promotion of the safety, health, welfare and convenience of inhabitants will be upheld under this clause though not specifically permitted.

Thara bye-laws. - Certain municipalities adopted model bye-laws regulating the erection or re-erection of *tharas*. These were framed under the general clause. So far as the bye-laws required the previous sanction of the committee for re-erection the bye-laws were *ultra vires*. Even the recent amendment of S. 172 cannot justify the existing *thara* bye-laws.

Prohibition
of buildings
without sanc-
tion.

Notice of
building.

Building
bye-laws

189. (1) No person shall erect or re-erect or commence to erect or re-erect any building without the sanction of the municipal committee.

(2) Every person who intends to erect or re-erect any building shall give notice in writing to the municipal committee of such intention.

(3) A committee shall by bye-laws -

(a) prescribe the manner in which notice of the intention to erect or re-erect a building shall be given to the committee.

(b) require that with every such notice shall be furnished a site plan of the land on which it is intended to erect or re-erect such building and a plan and specification of the building, of such character and with such details as the bye-law may require;

(c) where the building appears likely to be used as a factory, require the provision of adequate housing accommodation in connection therewith.

(4) Where bye-laws have been framed under this section no notice under sub-section (2) shall be considered to be valid until the information, if any required by such bye-laws, has been furnished to the satisfaction of the committee.

In municipalities to which Executive Officers Act is applied S. 189 should be deemed to have been amended as shown below:—

189. (1) No person shall erect or re-erect or commence to erect or re-erect any building without the sanction of the Executive Officer:

Section 189
as amended
by Executive
Officers Act

Provided that the Executive Officer shall not, without the approval of the committee, sanction the erection or re-erection of any building which involves any projection or encroachment over or upon any land vested in the committee or any land, the property of Government, which has been transferred to the committee for management;

Provided further that if the Executive Officer refuses to sanction the erection or re-erection by any person of any building except on the ground that such erection or re-erection would be in contravention of any bye-law or of any general scheme sanctioned by the Commissioner restricting the erection or re-erection of buildings or any class of buildings, such person may, within fifteen days from the date of the service of the Executive Officer's order refusing to sanction such erection or re-erection, appeal to the committee, and the committee's decision shall, subject to the provisions of Sections 225, 232 and 236, be final.

(2) Every person who intends to erect or re-erect any building shall give notice in writing to the Executive Officer of such intention.

(3) Same as Clause (3) above

(4) Where bye-laws have been framed under this section no notice under sub-section (2) shall be considered to be valid until the information, if any required by such bye-laws, has been furnished to the satisfaction of the Executive Officer.

Notes.

S. 92 of the old Act has been recast and split up into several sections. S. 189 reproduces with important changes only clause (1) of the old S. 92. The effect of these changes is indicated in the following notes.

Recent changes.—Clause (3) has been substituted by S. 72 of the Punjab Amendment Act, III of 1933.

The original clause (3) as amended by Act II of 1926 read as follow:—

A committee may by bye-law

- (a) prescribe the manner in which notice of the intention to erect or re-erect a building shall be given to the committee;
- (b) require that with every such notice shall be furnished site plan of the land on which it is intended to erect or re-erect such building and a plan and specification of the building, all of such character and with such details as the bye-law may require in respect of all or any of the matters following, *viz.*—
 - (i) free passage or way in front of the building;
 - (ii) space to be left about the building to secure free circulation of air and facilitate scavenging and for the prevention of fire;
 - (iii) ventilation and the provision and position of drains, privies, latrines, or cesspools;
 - (iv) level and width of foundation, level of lowest floor, and the stability of the structure; and
 - (v) the line of frontage with neighbouring buildings, if the building abuts on a street;
- (c) where the building appears likely to be used as a factory, require the provision of adequate housing accommodation in connection therewith.

Executive Officers Act.—The powers conferred upon or functions vesting in the committees under sub-sections (1), (2) & (4) of this section shall not be exercised by or vest in the committees but may be exercised by or vest in the executive officers in municipalities to which the Executive Officers Act has been extended. Notice to be given or tendered to the committees shall not be given or tendered to committees but shall be given or tendered to the executive officers in municipalities to which the said Act has been extended.

Analogous law:—

Ss. 237 & 241, Bengal District Municipal Act, 1884.
 Ss. 245 (c), 317 & 329, Bengal District Municipal Act, XV of 1932.
 Ss. 186, 187 & 195 (1) & (2), Behar and Orissa Municipal Act, 1922.
 Ss. 61 (1) (g) & 123, Bombay Municipal Boroughs Act, 1925.
 Ss. 48 (5) & 96, Bombay District Municipal Act, III of 1901.
 Ss. 337, 338 & 342, Bombay City Municipal Act, III of 1888.
 S. 92, Burma Municipal Act, III of 1898.
 Ss. 319 & 478(25), Calcutta City

Municipal Act, III of 1923.
 Ss. 179 & 180, Cantonment Act, II of 1924.
 S. 98, Central Provinces Municipal Act, II of 1922.
 Ss. 234, 236 & 349 (10), Madras City Municipal Act, 1919.
 Ss. 191, 197, 198 (1), 208, 209, & 306 (10), Madras District Municipal Act, V of 1920.
 S. 135 (xxxix) & 153, Rangoon City Municipal Act, 1922.
 Ss. 178, 179 & 298 List 1—A, U. P. Municipalities Act, 1916.
English Law:—
 Ss. 157, Public Health Act, 1875.
 S. 15, Public Health Act, 1907.

Clause (1).—This clause was newly added in 1911. In the absence of this provision there was nothing to prevent a person from erecting or re-erecting a building after giving of a notice under S. 92 of the old Act. Of course such a person was taking the risk of his application for sanction being refused. Under S. 237 of the Bengal Act of 1884, corresponding somewhat to S. 92 of the old Act it was held that a person commencing to build a house after giving notice of his intention to erect or re-erect a building, without waiting for six weeks mentioned in the Act, does not necessarily contravene the law; yet when he so acts, the reasonable view must be that he does it at his risk, his act being liable to be treated as one in contravention of any legal order of the municipality issued within the statutory period of six weeks if such order does not sanction the building: 25 Cal. 419. Cf. P. R. 13 of 1909 Cr. Under present Act sanction is necessary before commencement of erection or re-erection of the building. Cf. 1 Mad. L. J. 37 and 9 Mad. L. J. 335.

Other changes.—Clause (3) of 189 has been amended by S. 72 of the Punjab Amendment Act, III of 1933 and the framing of bye-laws has been made compulsory while the supply of details with respect to certain specific matters has been omitted with the result that the committees are not confined to particular details and may now prescribe in the bye-laws the supply of details of any information that the committees consider necessary to enable them to pass orders under S. 193, clause (3).

Building regulations.—The building regulations have for their purpose not only the protection of life, limb and property, but also the preservation of public health. Every citizen has the common law right of acquiring title to a tract of land in a city and to build thereon as his taste, convenience or interest suggest or his means justify, without taking into consideration whether his building would conform in general character and appearance to others previously erected in the same locality. A man has the absolute right to use his property in any way he likes, unless the right is expressly taken away by statute. A municipal corporation has no inherent power to interfere arbitrarily with the common law rights of real estate proprietors in the use and improvement of their property but through the cupidity or negligence of property-owners, a building may become unsafe for use, and the building may become not only unhealthy and unsafe to the occupants of building themselves but also to persons in the immediate vicinity. In the exercise of the police power of municipal corporations, they may, if so authorised by statute,

regulate the erection, alteration and repair of buildings within their local limits. The regulation of houses and other buildings so as to secure their proper sanitation, structure and safety, is amongst the most important of the duties which have been entrusted to local authorities under the various Municipal Acts. All the Acts creating municipal corporations in British India contain express provisions regarding buildings; and property-owners within the said local limits can construct or re-construct buildings only in accordance with the provisions therein contained. Whenever the owner's right to pursue his own plan in building, or repairing is challenged, it is determined by two tests: (1) Has the municipality power to forbid the contemplated erection, alteration or repair? (2) And has it lawfully exercised the power? An affirmative answer to both these questions is essential to sustain the municipal authority. Aiyangar on "Municipal Corporations in British India," pp. 565-6.

Building.—See definition of the word in S. 3 (2).

Municipal committees do not seem to avail themselves of the extended definition of the term. Numerous structures are being erected in large municipalities without exciting any notice; strictly speaking such structures should be regulated by the provisions of Ss. 189-95.

The term building as used in Ss. 189 and 190 and 193, means that part of the house in respect of which an application is made to the committee and it does not mean the whole of the house a portion whereof is proposed to be erected or re-erected and therefore, the conditions imposed by the committee under S. 193 must be confined to that part of the house in respect of which an application to erect or re-erect is made to it. It also follows that the committee is not entitled to invoke the aid of a bye-law which prohibits erection of any portion of any building abutting on a street or lane within four feet of the centre of such street or lane, for putting back an old outer wall of the applicant's house which abutted a street, if the building proposed to be erected does not abut a street. 1928 Lah. 393; 101 I. C. 285.

For what structures are buildings see Notes on pp. 20-21.

Erect or re-erect.—The expression is defined in S. 3, clause (5). See Notes under the definition.

Cf. the expression "erect or re-erect" with the definition of new building in S. 157, Public Health Act, 1875, and S. 23 of the Public Health Act (Amendment) 1907.

Converting an open verandah abutting a public street into rooms by filling up the arches with bricks is "re-erecting" a building. (1904) A. W. N. 233.

The building of the verandah is an erection or re-erection within the meaning of S. 237* of the Bengal Municipal Act, and, therefore, sanction is necessary. But unless rules are made under S. 241,† the municipality must either grant or refuse sanction without reservation; where no such rules are framed, a sanction with reservation is *ultra vires* and can be disregarded. 1922 Pat. 118; 63 I. C. 355.

A person served with a notice under Ss. 172 and 195 for re-erecting a house against express conditions of sanction under S. 193 and for constructing structures without written permission overhanging a street cannot question the validity of the notice in a civil suit. His proper remedy is an appeal under S. 225. 35 I. C. 222.

The mere addition of a masonry edging to a *chabutra* attached to a house is not a material alteration of it requiring sanction. 23 I. C. 192; 12 A. L. J. 227.

The mere raising of the plinth or making alterations in the size, position and number of doors or windows of a house are not material alterations in the original plan and consequently do not constitute an infringement of the sanction within the meaning of S. 195 unless such alterations affect the security of the building. Cf. 67 I. C. 828; 1923 Oudh 35.

What structures are held to be buildings and what acts amount to erection or re-erection of buildings according to English Public Health Acts will appear from the following authorities which are quoted from Lumley's "Public Health Acts," 10th Ed., pp. 24-6 and 358-60 as useful guides for construction of Punjab Municipal Act.

In *Stevens v. Gourlay*, (1859) 7 C. B. (N.S.) 99, a wooden structure, intended to be used as a shop, of considerable size and likely to last for some time, resting on joists, but having no fastenings or foundations in masonry and capable of being lifted from the ground, was held to be a "building" within 18 & 19 Vict. c. 22. In *Poplar Board of Works v. Knight*, (1858) El. B. & E. 408, it was held that a house simply built on the surface of the ground, without any foundations in the ordinary sense, was nevertheless a building within 18 and 19 Vict. c. 120, S. 204, which prohibited the erection of buildings over sewers. In *Morish v. Harris* (1865) L. R. I. C. P. 155, a structure built of stone having four walls and a door, which was used by the tenant for keeping guano and other manures, which he used on adjoin-

*S. 189 of Punjab Municipal Act.

†S. 190 of Punjab Municipal Act.

ing land was held to be a building within the Reform Act, 1832, S. 27; but the term, as used in that Act, does not include everything which can be called a building: "it ought to be in some degree adapted both to be used by man, either for residence or for the industry to which the statute relates, and also to have the degree of durability which is included in the idea of building" (per Erle, C. J., in *Powell v. Boraston* [1865] 29 J. P. 550; 18 C. B. [N.S.] 175). In *Watson v. Cotton*, (1847) 5 C. B. 51, decided with reference to the same Act, a shed described as standing against a wooden paling, but not fastened thereto, and consisting of six posts put into the ground supporting a tarpaulin, which formed the roof, one side being boarded up with boards nailed to the posts, the structure being used to put barrows and posts into, was held to be a building. In *R. v. Gregory*, (1833) 3 L. J. M. C. 25, an open shop roofed in, connecting the shop front with a newly built house, was held to be a building within the meaning of an Act which prohibited the erection of buildings within a given distance from a roadway. An erection made of wood, thirty feet long and thirteen feet wide, was brought along the streets on wheels and put at the corner of a new street. It had spouts with a fall-pipe, and a supply of gas, and was used as a butcher's shop: *Held*, that it was a new building. *Richardson v. Brown* (1885) 49 J. P. 661.

Movable seating consisting of tiers of platforms capable of accommodating about three thousand persons erected from time to time as required for exhibitions in the Agricultural Hall, was *held* not to be a "building, structure or work" within S. 145 of the London Building Act, (1894) *Venner v. McDonnell*, (1897) 1 Q. B. 421.

The erection of hoardings for advertisements was held to be a breach of a covenant not to erect or make any building or erection on certain demised premises. *Pocock Gilham* (1883) 1 C. & E. 104. In *Wood v. Cooper*, (1894) 3 Ch. 671, the erection of a substantial trellis-work screen, intended to be permanent, was *held* to be a breach of a similar covenant. An advertising company surrounded on three of its sides a piece of ground with boarded walls or hoardings raised to the height of 13 to 19 feet. 'These hoardings were stayed, fastened and tied together and strengthened on the inner side. The space enclosed was used for the preparation of wood for other hoardings. It was *held* that the structure was not a new building within the bye laws. *Slaughter v. Sunderland Corporation*, (1891) 60 L. J. M. C. 91: 55 J. P. 519.

The word building is not restricted to erection above the surface of a street. Thus, arches over which a roadway was made, and which were used as storehouses, were held to be buildings within S. 7 of the Gasworks Clauses Act, 1847. *Thompson v. Sunderland Gas Co.* (1877) 2 Ex. D. 429; 42 J. P. 198. So also street boxes for electric lighting purposes and reservoirs have been held to be buildings, structures or works within S. 145 of the London Building Act, 1894: *Whitechapel District Board of Works v. Crow* (1901) 65 J. P. 549; 84 L. T. 595. In *R. v. Foots Cray, U. D. C.*, (1916) 1 K. B. 246, the appellants who were the owners of an old building pulled down part of it including certain outer walls but left the remaining part of the premises standing, which part had been erected before the bye-laws came into existence. As required by the defendants' bye-laws the appellants gave notice of their intention to erect a new part on the site of the part pulled down, and they submitted plans and sections of such new part to the defendants, but gave no notice, plans and sections of the whole building, that is, the part left standing and the new part. It was held (overruling *Leonard v. Hoare & Co.*, [1914] 2 K. B. 798; 78 J. P. 287 that under S. 23 of the Public Health (Amendment) Act, 1907, the whole building, that is, the old part and the new part was not to be deemed a new building, and therefore the appellants were not bound to send notices as to, and plans and sections of, the whole building to the local authority.

A local Act provided that the conversion of one dwelling-house into two or more, and the re-conversion into a dwelling-house of a building discontinued as a dwelling-house, should be deemed to be the erection of a new building. A block of three shops with dwelling-rooms over each was converted into one shop in 1892; the upper part of the whole block was occupied as one dwelling from 1900 to 1903; in 1903 the shop was again divided into three shops, and the upper part correspondingly divided into three dwellings. It was held that the alteration of the upper part into three dwellings was the erection of a new building within the meaning of the Act. *Hall v. Eastbourne Corporation*, (1905) 69 J. P. 369.

In *Harding v. Larne U.D.C.*, (1911) 45 Ir. L.T. 182, it was held that the conversion without any structural alteration of a harness room into a living room, was the "conversion into a dwelling-house" of a building not originally constructed for human habitation, that therefore a penalty was incurred by not depositing plans, and that to continue to use it as a living room after conviction was a continuing offence.

In *James v. Wyvil*, (1884) 51 L. T. 237, Lord Coleridge, C. J., said: "The question whether a building is a new building or not has been decided over and over again to be a question of fact; it is a question of degree. For instance, if a building were nearly all taken away and then rebuilt, it clearly would be a new building; on the other hand, it is quite clear that by a small addition of, say, a door, the building would not thereby become a new building. Between these two extreme cases there may be thousands of cases, and it would be impossible to give a definition in each particular case as to what is or is not a new building, and it must be left to the discretion of each judge to decide for himself what is a new building."

Petrol pumps.—It was decided that a petrol pump consisting of a standard with the usual appurtenances was an "erection" and also an "obstruction" within the meaning of these words as used in a town-planning scheme: *Mackenzie v. Abbott*, (1926) 24 L. G. R. 444. But the Ministry of Health have expressed the view (in the absence of judicial authority) that such a pump is not a "building" for which the Minister can confirm bye-laws under the Public Health Acts, or a "temporary building" within S. 27 of the Public Health Act, 1907.

Erection of a pump is not an erection of a building and cannot be removed by notice under S. 195 as the pump cannot be treated as a building. Whether the pump is a building is a question of fact and it is conceivable that an elaborate pump in certain circumstances may fall within the definition of a building. 35 I. C. 526.

Bye-laws under Clause (3).—The committee has no power to enforce conditions regulating the line of frontage unless the intended building abuts on a street. 73 I. C. 725: 1923 Lah. 417. See also 1930 Lah. 547; 31 P. L. R. 193.

Buildings in progress when bye-laws made.—In *Hubbard v. Bromley R. D. C.*, (1905) 69 J. P. 437, it was held that buildings in course of erection when certain bye-laws came into force were not subject to the bye-laws as regards work carried out on them after the bye-laws came into operation.

Procedure.—This and the following sections lay down the procedure to be adopted by the intending builder. Before the building can be erected or re-erected, the person intending so to do must give notice of his intention to the committee in the prescribed form. The notice must be accompanied by such plans and other particulars as are required by the bye-laws framed under Ss. 189 & 190. After this the

intending builder is to wait till his application is sanctioned or till two months expire.

On receiving the notice with plans, etc., the committee has to pass orders within two months. The committee may either sanction the building absolutely or subject to certain directions or refuse the sanction. The municipalities have thus large powers of discretion under these sections. Their discretion if exercised *bona fide* is not liable to be controlled by any courts. See Notes under S. 193.

Disregard of the provisions of this section will entail the consequences mentioned in S. 195. Non-compliance with the provisions does not of itself make a person criminally liable: P. R. 13 of 1909 Cr. The breach of any bye-laws under this section may be rendered punishable under S. 199.

Where there is nothing in the municipal rules directing that applications to the committee should be presented in person, the rejection of an application sent by post is improper, and gives a cause of action against the committee. 4 All. 102.

Applications for construction or reconstruction of buildings.—If any person intends to construct or re-construct a building within the limits of a municipal corporation, he is bound to submit an application in writing for the approval of the site together with a site plan of the land and an application in writing for permission to execute the work together with a plan of the building and complete elevations, sections and specifications of the work. This application must be submitted even in respect of the proposed construction of a portion of a building including walls thereof. The application should strictly conform to the provisions of the various Municipal Acts and the rules and bye-laws made thereunder. If bye-law requires that a deposited plan should show adjoining buildings, it must be shown. The fact that several of the prescribed particulars may be applicable to houses only does not exonerate the builder of a wooden stable from depositing a plan.

Deposit of plans.—A bye-law requiring plans of new buildings showing the position of such buildings and of adjoining buildings, was held good in *Slee v. Bradford (Mayor of)*, (1863) 8 L. T. 491. Bye-laws made under this section may require plans of a similar kind. It has been held that it is reasonable to make bye-laws enabling the authority to retain the plans of intended buildings, although such plans be disapproved. *Gooding v. Ealing L. B.*, (1884) 1 T. L. R. 62.

S. 99 of a local Act provided that every house to be thereafter erected on vacant land, except corner houses,

should have a back-yard or other vacant ground or area of not less length than eight feet extending from the main building for the whole length of such building; and S. 101 required a plan to be furnished to the local board by persons intending to build, showing the particulars required by the Act, and provided that the plan should not be carried into execution, nor the building commenced, until the plan should have been approved. A builder submitted a plan of four new houses having vacant ground at the side, but not at the back. The board disapproved the plan as not complying with S. 99, but he commenced to build notwithstanding. It was *held* that whether S. 99 required the vacant space to be at the back or not, he was rightly convicted of an offence against S. 101: *Pearson v. Kingston-upon-Hull L. B.*, (1865) 35 L. J. M. C. 36; 29 J. P. 711. A builder who executes work substantially departing from his approved plans may be convicted for executing it without having previously deposited plans: *Burton v. Acton*, (1887) 51 J. P. 566; *James v Masters*, (1893) 1 Q. B. 355. The owner of a building estate had deposited a specimen plan, in accordance with the bye-laws, of certain types of houses intended to be erected. He deviated from such plan in regard to one of the houses in four respects, and was summoned; but the justices dismissed the summons on the ground that the deviations were not substantial. Subsequently he was summoned for deviation from the deposited plan in regard to two other houses in the same row, on the ground (as found by the justices) of similar deviations. The summons was dismissed on the ground that the matter was *res judicata*. It was *held* that the justices were bound to hear the summons on the merits, and that the matter was not *res judicata*. *Balby-with Hexthorpe U. D. C. v. Millard*, (1903) 68 J. P. 81.

S. 96 (2) of Bombay District Municipalities Act, 1901, corresponds in part to S. 193 of the Punjab Municipal Act. The Bombay High Court held that S. 96 (2) gives a municipality a very wide power of regulating buildings, subject to only two restrictions on it: (1) the general limitation as to all statutory powers of public functionaries that the orders under it are reasonable and (2) the particular limitation expressed in the section that the orders are not inconsistent with the Act.

A municipality is not liable to pay compensation in all cases where it orders a householder to leave vacant a strip of land on his own plot between the front of his house and the street, but only when the land left vacant is included in a public street: 33 I. C. 675. A clause in a town-planning scheme which prescribed a building line was held not to be

a provision which prescribed the space about buildings within the meaning of S. 157 (3), Public Health Act, 1875. *Re Ellis and Ruislip-Northwood U. D. C.*, (1920) 1 K. B. 343.

Building regulations and authorized works of certain companies.—Where gas, water, or other works are authorised to be erected by an Act of Parliament, the question often arises whether the companies are bound to conform to building Acts or bye-laws locally in force relating to buildings, *e. g.*, the building line. The guiding principle is that the company must conform to the building Acts or bye-laws, unless there is something in the private Act which is inconsistent with the general provision of the building Acts or bye-laws. Where a railway company was empowered to make a subway “with all necessary works connected therewith” upon certain scheduled land lying within the limits of deviation delineated on the deposited plans, and described in the deposited books of reference, and the company built within the limits of deviation a station which was found by the magistrate to be necessary and convenient for the purposes of the railway and a part of which projected beyond the line of buildings, it was *held* that the effect of the special Act was to repeal S. 75 of the Metropolis Management Amendment Act, 1862, (25 & 26 Vict. c. 102), so far as related to the station: *City and South London Rail. Co., v. London C. C.*, (1891) 2 Q. B. 513. So, where a school board for London, acting under powers of a provisional order confirmed by Parliament, compulsorily acquired a piece of land for the purpose of providing school accommodation, the land being defined by metes and bounds in the schedule to the special Act, and the school board built upon the land a school with a play-ground attached, the external fence of the play-ground being within twenty feet of the centre of a public highway, it was *held* that the provisions of Ss. 4 and 6 of the Metropolis Management and Buildings Act Amendment Act, 1878, which forbade the erection, without the consent of the Metropolitan Board of Works, of any building wall, or fence within twenty feet of the centre of a highway were inconsistent with the statutory powers given to the School Board Elementary Education Act, 1870, for the acquisition and user of the land, and that the school board could therefore use the land for the statutory purposes for which it was acquired free from the restrictions imposed by those provisions: *London C. C. v. School Board for London*, (1892) 2 Q. B. 606. See also *London and Blackwall Rail. Co. v. Limehouse District Board of Works* (1856) 26 L. J. 164.

S. 93 of the Waterworks Clauses Act, 1847, (10 & 11 Vict. c. 17), provides that nothing therein or in the special Act contained shall be deemed to exempt the undertakers

"from any act for improving the sanitary conditions of towns and populous places which may be passed in the same session of Parliament in which the special Act is passed, or any future session of Parliament." A water company by their special Act, passed in 1847, and incorporating the Waterworks Clauses Act, 1847, were empowered to make and maintain "in the lines and situations and according to the levels shown on the deposited plans and sections the waterworks hereinafter described with all proper and necessary embankments," etc. Among the waterworks described was "a high service water tower situated in the field or enclosure No. 1117 on the Ordnance Map (edition of 1888) of the said parish" Shortly after the special Act came into force the local authority of the district, under the powers given by S. 157 of the Public Health Act, 1875 (38 & 39 Vict., c. 55), made bye-laws providing that any persons intending to erect a building should give the local authority notice of his intention, and of the date on which the building was to be commenced, and deliver them the plans and sections of it, and a description of the materials with which it was to be constructed: *Held*, with respect to the erection of the water tower authorised by the special Act, that S. 93 of the Waterworks Clauses Act, 1847, had not the effect of exempting the water company from the provisions of the Public Health Act, 1875, and that the special Act contained no provision inconsistent with the Act of 1875, and, therefore, that the company were bound to comply with the bye-laws made by the local authority under that Act: *Uckfield R. D. C. v. Crowborough District Water Co.*, (1899) 2 Q. B. 664.

So where a gas company were authorised to erect on lands specified in the schedule to their Act, "such gasworks whether for the manufacture, storing and supply of gas or otherwise as they think fit," and in February, 1899, they proceeded on such land to build a purifying house, the external walls of which were within twenty feet of the centre of a highway, it was *held* (on a case stated) that the Gas Company's Act contained no powers inconsistent with the London Building Act, 1894 (57 & 58 Vict., c. cxxxiii.), and that the company could only build subject to that Act: *London C. C. v. Wandsworth and Putney Gas Co.* (1900), 82 L. T. 562. Cf. *Charing Cross and Strand Electricity Supply Corporation v. Woodthorpe* (1903), 88 L. T. 772.

See also *London C. C. v. South Metropolitan Gas Co.*, J.L. of G. L., November 22nd, 1898, p. 1168, where the Greenwich magistrate imposed a fine on the defendants in connection with the erection of a coal shed at Rotherhithe Gasworks within the prescribed distance of twenty feet from the centre of a

highway and without having first obtained the consent of the council.

A metropolitan district board of works having parliamentary power to supply electric energy and to execute works for the purpose, proceeded to construct street boxes or chambers under a street for the purpose of electric lighting without serving the building notice respecting it required by the London Building Act, 1894. They contended that this Act did not apply, as their special Act of 1892 was inconsistent therewith. The magistrate *held* that the Acts were not inconsistent and imposed a fine. He also *held* that the street boxes were "buildings, structures or works" within the Building Act (*Crow v. Whitechapel Board of Works*, JI. of G. L., June 12th, 1900, p. 1558; *Electrician*, June 8th, 1900 p. 1558; *Electrician*, June 8th 1900, p. 263). On a case stated a divisional court confirmed this decision (84 L. T. 595).

A water company acquired compulsorily in 1853 a piece of land with power to construct waterworks. They constructed certain works upon it, and, from time to time, added thereto. In 1897, additional pumping accommodation having become necessary, they resolved to build, on a vacant portion of this piece of land, an engine-house in connection with their existing works. local authority insisted that plans for such building should be deposited in accordance with the requirements of their bye-laws, and that the building proposed to be erected was contrary to the provisions of the Public Health (Buildings in Streets) Act 1888, 51 & 52 Vict. c. 52. The water company contended that by their private Act of 1852 they were in effect exempted from the operation of the provisions of the Act of 1888. The water company then commenced an action in the High Court, claiming a declaration that they were entitled to erect an engine house and other buildings without the consent of the defendants. Thereupon the local authority took proceedings before the justices, who found that the plaintiff's building did project beyond the front main wall of the house or building on either side, and inflicted a fine. Afterwards on a summons in the action to have the question of law raised by the defence decided before the action was further proceeded with, Stirling, J., refused to interfere by way of injunction or declaration of right, holding that the legislature had provided in such cases for a mode of procedure before Justices. *Grand Junction Water Works Co., v. Hampton U. D. C.* (1898) 2 Ch. 331.

Government buildings.—By Act IV of 1899 the Government buildings are exempt from the operation of municipal building laws.

The erection of Government buildings is governed by the provisions of this Act which is given *in extenso* below. The provisions require a notice to municipal committee and the final decision rests with Government to accept or reject the objections of the local authorities.

THE GOVERNMENT BUILDINGS ACT, 1899

(IV OF 1899).

Whereas it is expedient to provide for the exemption from the operation of municipal building laws of certain buildings and lands which are the property, or in the occupation, of the Government and situate within the limits of a municipality: it is hereby enacted as follows:—

1. (1) This Act may be called the Government Buildings Act, 1899.

(2) It extends to the whole of British India; and

(3) It shall come into force at once.

2. In this Act the expression “municipal authority” includes a municipal corporation or a body of municipal commissioners constituted by, or under the provisions of, any law or enactment for the time being in force.

3. Nothing contained in any law or enactment for the time being in force to regulate the erection, re-erection, construction, alteration or maintenance of buildings within the limits of any municipalities shall apply to any building used or required for the public service or for any public purpose which is the property, or in the occupation, of the Government, or which is to be erected on land which is the property or in the occupation, of the Government:

Provided that, where the erection, re-erection, construction or material structural alteration of any such building as aforesaid (not being a building connected with Imperial defence, or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret) is contemplated, reasonable notice of the proposed work shall be given to the municipal authority before it is commenced.

4. (1) In the case of any such building as is mentioned in the last preceding section (not being a building connected with Imperial defence or a building the plan or construction of which ought, in the opinion of the Government, to be treated as confidential or secret), the municipal authority or any person authorized by it in this behalf may, with the permission of the local Government previously obtained, but not otherwise, and subject to any restrictions or conditions which may, by general or special order, be imposed by the local Government, inspect the land or building and all plans connected with its erection, re-erection, construction or material structural alteration, as the case may be, and may submit to the local Government a statement in writing of any objections or suggestions which such municipal authority may deem fit to make with reference to such erection, re-erection, construction or material structural alteration.

(2) Every objection or suggestion submitted as aforesaid shall be considered by the local Government, which shall, after such investigation (if any) as it shall think advisable, pass orders thereon, and the building referred to therein shall be erected, re-erected, constructed or altered, as the case may be, in accordance with such orders:

Provided that, if the local Government overrules or disregards any such objection or suggestion as aforesaid, it shall give its reasons for so doing in writing.

(3) Every order passed by the local Government under this section shall be subject to revision by the Governor-General in Council, but not otherwise, and the decision of the Governor-General in Council thereon shall be final.

190. (1) The committee may, and if so required by the local Government shall, by bye-laws regulate in respect of the erection or re-erection of any building within the municipality or part thereof—

Power of
committees
to make bye-
laws as to
mode of con-
struction of
building.

- (a) the materials and method of construction to be used for external and party walls, roofs, floors, staircases, lifts, fire-places and chimneys;
- (b) the materials and method of construction and position of fire-places, chimneys, drains, latrines, privies, urinals and cess-pools;
- (c) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on;
- (d) the ventilation and the space to be left about the building to secure the free circulation of air and for the prevention of fire;
- (e) the line of frontage where the building abuts on a street;
- (f) the number and height of the storeys of which the building may consist;
- (g) the means to be provided for egress from the building in case of fire;
- (h) the materials and method of construction to be used for godowns intended for the storage of food-grains in excess of fifty maunds, in order to render them rat-proof;
- (i) the minimum dimensions of rooms intended for use as living rooms or sleeping rooms;
- (j) the ventilation of rooms and the minimum dimensions of doors or windows or either of both;

(k) the position and dimensions of projections beyond the outer face of any external wall of a building; and

(l) the height of factory chimneys and the provision to be made for consumption of smoke arising from the combustible used in any fire-place or furnace in a factory.

(2) Notwithstanding anything contained in section 193, no person shall erect or re-erect any building in contravention of any bye-law made under section (1).

Notes.

S. 93 of the old Act.

In 1911 new sub-clauses were added and the clause requiring special permission of Government to extend the section to any municipality was removed.

S. 73 of the Punjab Amendment Act III of 1933 has substituted the present section for the section as it existed before. Sub-clauses (i) to (l) are new while sub-section (2) is also new. The amendment further empowers the local Government to compel the municipal committees to frame bye-laws under this section.

Analogous Law:—

- | | |
|---|---|
| S. 241, Bengal District Municipal Act, 1884. | S. 186, Cantonment Act, II of 1924. |
| S. 329, Bengal Municipal Act, XV of 1932. | S. 97, Central Provinces Municipal Act, II of 1922. |
| S. 195 (e), Behar and Orissa Municipal Act, 1922. | Ss. 230 (3) & 319 (9), Madras City Municipal Act, 1919. |
| S. 61 (1) (t) & (v), Bombay Municipal Boroughs Act, 1925. | S. 191, Madras District Municipal Act, V of 1920. |
| Ss. 48 (p) District Bombay Municipal Act, III of 1901. | S. 135 (xxxix), Rangoon City Municipal Act, 1922. |
| Ss. 348, 349 A—B, 349D & 461 (c), Bombay City Municipal Act, III of 1888. | S. 298, List 1 (f) & (h), U. P. Municipalities Act, 1916. |
| S. 93, Burma Municipal Act, III of 1898 | <i>English Law:—</i> |
| S. 478 (26), Calcutta City Municipal Act, III of 1923. | S. 157, Public Health Act, 1875. |
| | S. 24, Public Health Act, 1907. |
| | Ss. 23 to 26, Public Health Act, 1890. |

Requirement of valid bye-laws.—See Notes on pp. 23—36 under S. 3 (3).

External walls and party walls.—These are not defined anywhere in the Act. In English Model bye-laws governing construction of buildings the words are defined as follows:—

Party wall means (a) a wall forming part of a building and being used or constructed to be used in any part of the height or length of such wall for separation of adjoining

buildings belonging to different owners or occupied or constructed or adapted to be occupied by different persons; or (b) a wall forming part of a building and standing, in any part of the length of such wall, to a greater extent than the projection of the footings on one side on grounds of different owners. External wall means an outer wall of a building not being a party wall, even though adjoining to a wall of another building. The definition here given does not include "party fence walls."

This definition is an expansion of the definition contained in S. 3 of the now repealed Metropolitan Building Act, 1855 (18 & 19 Vict., c. 122), which defined "party walls" as applying to every wall used or built in order to be used as a separation of any building from any other building, with a view to the same being occupied by different persons. Upon this enactment, Fry, J., in *Knight v. Pursell*, (1879) 11 Ch. D. 412 at p. 414, observed as follows:—"It appears to me, on reading the definition of a party wall contained in the third section of the Act, that the intention is to define a party wall not by reference to the rights of ownership, which the adjoining proprietors may have in any particular wall in dispute, but by reference to the mode in which the wall is used. It is a question not of title but of user. The object of the Act is to limit the acts of private owners for the general benefit of the public to prevent the spread of fire and for similar purposes. And, therefore, in order to determine whether this wall is a party wall it is not necessary to consider what rights the plaintiff and defendant have, but what is the physical condition, position, and user of the wall." In *Knight v. Pursell*, (1879) 11 Ch. D. 412, the facts were that the plaintiff was the owner of a boundary wall built on his own land, against which he had built some closets, and the defendant, his adjoining neighbour, had recently built a substantial structure. Fry, J., *held*, so far as these buildings extended against both sides of the wall it was party wall within the meaning of the Act, and that the defendant was entitled on giving proper notice under the Act, to take down such part as might be necessary for the purpose of necessary rebuilding. This decision was affirmed in the Court of Appeal. W. N. (1880), p. 104.

The general meaning of the term "party wall" is further discussed by Fry, J., in *Watson v. Gray*, (1880) 14 Ch. D. 192, at p. 194 as follows:—"The words appear to me to express a meaning rather popular than legal, and they may, I think, be used in four different senses. They may mean, first, a wall of which the two adjoining owners are tenants in common, as in *Wiltshire v. Sidford*, (1827) 1 M. & R. 404, and *Cubitt v.*

Porter, (1828) 8 B. & C. 257; I think that the judgments in those cases show that that is the most common and primary meaning of the term. In the next place the term may be used to signify a wall divided longitudinally into two strips, one belonging to each of the neighbouring owners, as in *Matts v. Hawkins*, (1813) 5 Taunt. 20. Then, thirdly, the term may mean a wall which belongs entirely to one of the adjoining owners, but is subject to an easement or right in the other to have it maintained as a dividing wall between the two tenements. The term is so used in some of the Building Acts. Lastly, the term may designate a wall divided longitudinally into two moieties, each moiety being subject to a cross easement in favour of the owner of the other moiety."

"External wall."—The above definition has reference to the decision in *Green v. Eales*, (1841) 2 Q. B. 225, where it was held that the external parts of premises are those which form the inclosure of them, and beyond which no part of them extends; and it is immaterial whether they are exposed to the atmosphere, or rest upon and adjoin some other building which forms no part of the premises let.

A bye-law provided: "Every person who shall erect a new building shall cause the back of every chimney opening in a party wall to be at least nine inches thick, and he shall cause such thickness to be continued at the back of the flue; such person shall cause the back of every other chimney opening to be at least four-and-a-half inches thick if such opening be in an external wall and nine inches thick if such opening be elsewhere than in an external wall, and he shall cause such thickness to be continued at the back of the flue: Provided that where flues are constructed back-to-back the thickness at the back of such flues may be not less than four-and-a-half inches." It was held that the proviso did not apply to flues in a party wall dividing adjoining houses. *Miller v. Field* (1914) 78 J. P. 5.

Materials.—The bye-laws may provide that the walls, etc., should be constructed of incombustible materials. It may be noted that the words "incombustible materials," as used in S. 19 of the Metropolitan Building Act, 1855, have been held to mean wholly incombustible materials and not to include duroline. *Payne v. Wright* (1892) 1 Q. B. 104; 56 J. P. 120.

And see *Badley v. Cuckfield R. D. C.* (1895) 64 L. J. Q. B. 571, where it was held that a building consisting of a wooden framework covered with a skin of galvanized iron lined with felt and match-boarding was not constructed with walls constructed of hard and incombustible materials within the meaning of a bye-law made under this section.

In *Hendon U. D. C. v. Martin*, (1900) *Times*, January 13th it was held that a building roofed with vulcanite covered with one-and-three-quarter inches of soil and a like thickness of burnt ballast was externally covered with incombustible materials within the meaning of a bye-law following the terms of the London Building Act, 1894.

Drainage of buildings etc.—A bye-law that no dwelling-house shall be erected without having at the rear or side a sufficient roadway for the purpose of affording efficient means of access to the privy or ashpit belonging to the house was held not to be legal: *Waite v. Garston Local Board* (1867), L. R. 3 Q. B. 5. On the other hand, a bye-law requiring a cesspool to be fifty feet from a dwelling-house was held not to be unreasonable and therefore valid: *Simmons v. Malling R. D. C.* (1897) 2 Q. B. 433. Separate surface water and sewage sewers may be ordered to be provided. But where the local authority has not provided separate drains for sewage and surface water, a bye-law requiring separate sewers cannot properly be made. A bye-law forbidding the construction of any cesspool so that it shall have by drains or otherwise any outlet or means of communication with any sewer is not violated by connecting together a series of cesspools. *Button v. Tottenham U. D. C.* (1898) 78 L. T. 470.

Building bye-laws may also provide for the erection or re-erection of a sufficient water-closet, earth closet, or privy, and an ashpit. The provision of a sufficient accommodation for the common use of two houses is not invalid. The council can direct what kind of closet accommodation is to be provided; but it cannot enforce a general resolution that a particular system must be adopted within its local limits. It must exercise its discretion in each particular case. If a proper water-closet is not provided, the local authority may enter upon the premises and erect a water-closet at the cost of the owner after notice. Aiyangar's, "Law of Municipal Corporations," p. 573.

An urban authority made the following bye-law: "No new house shall be occupied until the house drainage has been made and completed, nor until such house has been certified by the local board, or their officer authorised to give such certificate, after examination, to be in every respect fit for human habitation in their or his opinion": *Held*, that the bye law was reasonable and not inconsistent with any of the provisions of the Act, and therefore valid. *Horsell v. Swindon New Town L. B.*, (1888) 52 J. P. 597; 58 L. T. 732.

Clause (d).—Though addition to an existing building is an erection of a building requiring sanction and compliance

with bye-laws, under S. 190 some of the bye-laws may be inapplicable. In *Repton School Governors v. Repton R. D. C.*, (1913) 2 K. B. 133; 82 J. P. 257, the plaintiffs proposed to build an addition to the front of one of their school buildings. The local bye-laws provided that "every person who shall erect a new domestic building shall provide in the rear of such building an open space exclusively belonging to such building of an aggregate extent of not less than 150 square feet. It was admitted that under S. 23 of the Public Health (Amendment) Act, 1907, the addition was a new building, and the defendants refused to approve the plans as the above bye-law would be thereby infringed. It was *held* that the bye-law was unreasonable and therefore bad in that it was impossible to provide an open space at the rear of a new building which consisted of an addition to an existing building.

Open space and ventilation. – The sufficiency of the space about buildings affects the amenity of life in many ways. In these bye-laws it can only be dealt with directly as affecting the "free circulation of air." Incidentally, however, the model clauses dealing with the matter will be found to have relation to the width of streets, and the provision of sanitary accommodation, as well as the ventilation of buildings, with which latter subject that of open space is naturally associated in S. 157 of the Public Health Act, 1875. One all-important point is that there should be a sufficient extent of open space both in front and in rear of every building, so as to secure what is known as "through ventilation." Clause 53 of model series deals with space in front, and clause 54 with space in rear, of "domestic buildings" as defined in clause 1, and are thus complementary the one to the other.

Where a bye-law of a local authority provided that wherever any open space had been left belonging to any building, it should never afterwards be built upon without consent of the authority, and without having an open space of a specified size and dimensions, it was *held* by the Court of Queen's Bench that if it applied to old buildings it was invalid. *Tucker v. Rees* (1861), 25 J. P. 789.

Where a bye-law provided that a certain amount of air space should be left in the rear of any new building, and a person built, in contravention of that bye-law, without leaving the required space, it was *held* that the local authority might pull down the offending building, consistently with safety, in any way they pleased, but not in a dangerous way, so that where there had been excess in pulling down the building, they were not liable unless the damage done was appreciable. *Jagger v. Doncaster Rural Sanitary Authority* (1890) 54 J. P. 438.

Under a bye-law which required that in the rear or at the side of every building there should be left an open space of not less than one hundred feet, the distance across which, or between such building and the opposite property at the rear or side, shall be twenty-five feet, the distance of twenty-five feet is to be measured at any and every part of the building to the opposite property, and it is not sufficient that in some part of the building there is a distance of twenty-five feet to the opposite property. *Anderton v. Birkenhead Improvement Commissioners* (1863), 32 L. J. M. C. 137; *Anderson v. Rigby*, 13 C. B. (N. S.) 603.

Where, under a local improvement Act, a bye-law was made which provided that every new building should have in the rear or side an open space of at least one hundred and fifty square feet, "and wherever any open space had been left when the building was approved, such space shall never afterwards be built upon without the approval of the council," it was *held* that the bye-law was bad, so far as prohibiting future buildings on the open space in the rear: *Quinby v. Mayor of Liverpool* (1889), 53 J. P. 213. The argument and the decision in this case went on the ground that, under the bye-law, the open space could never have been built upon, whatever its extent might be.

For further notes *see* "Mackenzie and Handford Model Bye-laws," pp. 140-56.

G, without the authority's approval, built a stable on the vacant space beside a dwelling-house, and was summoned for contravening a bye-law providing for purposes of ventilation, that an open space should be left in the rear of every new domestic building. "Domestic building" was defined as "a dwelling-house or an office building or other outbuilding appurtenant to a dwelling-house, whether attached thereto or not, or a shop, or any other building not being a public building or of the workhouse class." The plans showed that the stable was not intended for human habitation: *Held*, that the bye-law did not apply to the stable and that, if it had so applied, it would have been unreasonable as requiring the same space for stables and for dwelling-houses. *Collins v. Greenwood* (1910), 74 J. P. 327; 103 L. T. 36.

Ventilation and space.—A clause in a town planning scheme which prescribed a building line was held not to be a provision which prescribed the space about buildings within the meaning of S. 157 (3). *Re Ellis and Ruislip Northwood U. D. C.*, (1920) 1 K. B. 343. A local board made a bye-law that every building to be erected and used as a dwelling-house should have an open space exclusively

belonging thereto to the extent at least of 500 square feet, free from any erection thereon above the level of the ground: *Held*, a valid bye-law, and that justices might find as a fact that a small wooden fence, three feet six inches high, erected round the house, was an "erection" within the meaning of the bye-law: *Adams v. Bromley L. B.*, (1872) 37 J. P. 662. In *Reay v. Gateshead Corporation*, (1886) 50 J. P. 805, 821; 55 L. T. 92, the following bye-law was held good: "The yard space shall not be less than one half of the entire area of the house or building and out-offices, and no building whatever shall be erected in or over such yard except the privy ashpit, and coal-house in connection with the house or building, and these only in such a position as the board shall approve. The yard space shall be left upon such portion of the ground as the board may order." A bye-law provided that every person erecting a new building to be used as a dwelling-house should provide in the rear thereof an open space exclusively belonging thereto, to the extent of at least 150 square feet, from any erection thereon above the level of the ground, and should cause the distance across such open space between every such building and the opposite property at the rear to be ten feet at least, and if such building be twenty-five feet in height, should cause such distance across to be at least twenty feet. It was proved that P had erected a new building to be used as a dwelling-house, twenty-five feet in height; that there was in the rear of the building an open space exclusively belonging thereto to the extent of 700 square feet; that the distance across such open space between such building and the boundary of the opposite property at the rear thereof, including the width of the street which divided the building from the opposite property, was fifty-two feet; that the land exclusively belonging to such building was bounded in the rear by a public street, and that the distance across the open space between the building and the public street was eight feet: *Held*, that on the true construction of the bye-law, the public street was the "opposite property," and that as P had not caused the distance across the open space between his building and the opposite property to be at least twenty feet, he had committed a breach of the bye-law: *Jones v. Parry* (1887) 52 J. P. 69; 57 L. T. 5492). The plaintiffs, governors of a school, made an addition to their school building which consisted in part of an addition to the front of the building of a projection three storeys high. The defendants threatened to pull down the addition on the ground that it was a new building by virtue of the provisions in the text, and had not an open space in the rear as required by the bye-laws relating to new buildings. It was *held* that the bye-law was unreasonable and bad,

as it was impossible to provide an open space at the rear of a new building consisting of an addition to an existing building. *Repton School Governors v. Repton R. D. C.*, (1918) 2 K. B. 133; 82 J. P. 257.

Clause (e). Bye-law imposing condition on erection or re-erection of building abutting on a street under Section 190 (e).—The condition provided in bye-law 26 of Delhi building bye-laws can only be imposed in relation to the new building which it is proposed to erect and does not empower the committee to direct the demolition of any existing building. So also a condition precedent to the application of the bye-law is that the new building should abut on a street or lane. 1930 Lah. 488; 126 I. C. 567.

The committee has no power to enforce conditions regulating the line of frontage unless the intended building abuts on a street. 73 I. C. 725; 1923 Lah. 417. *See also* 1930 Lah. 547; 31 P. L. R. 193.

Clause (f). Height.—Building bye-laws may prescribe the height to which a particular building in any particular street could be constructed. To secure a sanitary sufficiency of light and air, there must be some relation between the width of a street and the height of the building on both sides; and in the interests of health and well being of cities, this legislation of a technical kind is undertaken. Building a wall, however high, is not a nuisance; but under certain circumstances, it may become one: 15 C. W. N. 316. If the building in question lies between two streets it must fulfil the prescribed conditions with reference to both the streets on which it abuts. These statutory provisions are intended in the interests of public health; and the courts ought to construe them so as to advance that object: 9 Bom. L. R. 363. These regulations do not apply to old buildings, but as soon as they are destroyed by fire or pulled down and new buildings are attempted to be reconstructed, the new buildings are governed by the regulations though they are set back by five inches they will still be regarded as abutting a street. 9 Bom. L. R. 737.

Even where S. 190 is not applicable or where bye-laws have not been framed under that section a municipal committee is justified in refusing to sanction a building on the ground that it will be of such a height as will render it an unsuitable building in the locality in which it is proposed to construct it.

Where bye-laws under S. 190 have been framed the municipal committee has power to make standing orders with regard to specifications and designs of all buildings to be erected in the municipal area and if the specifications and

designs of a proposed building do not comply with the bye-laws under S. 190 the proposal will be rejected automatically unless the committee directs otherwise. Where such bye-laws have not been framed each application will be taken upon its merits and the intending builder is under no obligation to see that his design conforms to any particular regulation. But the absence of bye-laws under S. 190 does not prohibit a municipality from refusing permission to erect or re-erect a building under S. 193 on the points mentioned under S. 190: 49 I. C. 463. Under the existing provisions of Ss. 189 and 195 erection or re-erection of a building is not an offence in itself. It is only after a notice under S. 195 has been issued and remains uncomplied that the offence comes into existence under S. 219. Bye-law regulating height of building to be re-erected is *intra vires*. 22 Bom. 980.

Where there is a substantial residential house, the house as a whole must be regarded as the building referred to in S. 190 (f) and it is not possible without unduly straining the wording of the section to construe the word as denoting some small portion of the whole house, such as an outlying bath-room.

The accused added small bath-rooms to the third and fourth floors of an old residential house in the city of Bombay. The house had been built before the coming into force of the City of Bombay Municipal Act, 1888, and the newly added bath-rooms fell below the original height of the house:

Held, that the accused had neither raised nor erected a building within the meaning of S. 349-B of the City of Bombay Municipal Act, and that he was consequently outside the purview of that section. 42 I. C. 134; 41 Bom. 741.

Building Bye-laws - Width of the street with reference to height.—The words “opposite side of the street” in bye-law 233 of Karachi need not necessarily be construed as excluding the raised pavement or platform in front of a building because the pavement or platform happens under another definition to form part of that building. *Cf.* 1933 S. 258.

Acquiescence in an invalid and illegal objection does not bind the plaintiff or prevent him from exercising his right. *Ibid.*

Clause (2).—This clause has been introduced by S. 73 of the Punjab Amendment Act, III of 1933. A plan sanctioned by a municipal committee will not empower the owner to erect or re-erect a building if the sanction contravenes the provisions of any bye-law made under S. 190 (1).

Authority cannot dispense with bye-laws.—The bye-laws made under this section are the most important with which

a local authority has to deal. It may be opportune, therefore, to remark here that unless the bye-laws themselves, or some statute give the authority a dispensing power or discretion, the authority are bound by them and cannot waive their requirements. *Baxter v. Bedford* (1885) 1 T. L. R. 424; *R. v. Newcastle-upon-Tyne (mayor of)* (1889), 60 L. T. 963.

The approval by an authority of building plans which contravene the bye-laws made by that authority is illegal and inoperative: *Yabbincom v. King*, (1899) 1 Q. B. 444; 63 J. P. 149. Even where a local Act contains in a section repealing previous bye-laws a proviso saving approved plans such saving refers only to plans legally approved. (*Ibid.*)

The fact that bye-laws contain no proviso enabling an authority to make exception in an exceptional case does not render them unreasonable and therefore invalid: *Salt v. Scott-Hall*, (1903), 67 J. P. 306. The Ministry of Health are in fact, opposed to bye-laws which reserve a discretionary power to the authority or their officers. They state that bye-laws in such a form are uncertain in their operation and that bye-laws should prescribe definite requirements. If a bye-law is found not to be enforceable in practice without the exercise of a discretionary power there is strong *prima facie* ground for thinking it to be unreasonable, and to need amendment in regular form although it is not obligatory for a local authority to prosecute for a breach so trivial that the justices would probably take advantage of the provisions of S. 1 of the Probation of Offenders Act, 1907: *Pomeroy v. Malvern U. D. C.*, (1903) 67 J. P. 375; *Leyton U. D. C. v. Chew* (1907) 2 K. B. 283.

191. In any case in which no bye-laws have been made under sub-section (3) of section 189 the committee may, within fourteen days of the receipt of the notice required by sub-section (2) of that section, require a person who has given such notice to furnish, within one week of the receipt by him of the requisition, information on all or any of the matters as to which bye-laws might have been made, and in such case the notice shall not be valid until such information has been furnished.

Special provision for cases where bye-laws have not been made under section 189 (3)

Notes.

Cf. Clause (3), S. 92 of the old Act.

Analogous Law:—

S. 96 (3), Bombay Act, III of 1901.	1922.
S. 172 (2), U. P. Municipalities Act, II of 1916.	Ss. 340-343, Bombay City Municipal Act, 1888.
S. 101, C. P. Municipal Act, II of	S. 186, Cantonment Act, II of 1929.

Under this section the committee cannot go beyond and demand information not contemplated by these provisions or bye-laws under S. 189 (3). Cf. 15 Bom. 516.

Delegation. Power under S. 191 can be delegated under S. 33 (a).

Executive Officers Act.—The powers conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Consequence of contravening these provisions.—Under a corresponding section of the Bombay Municipal Act (VI of 1873) plaintiffs sent a notice intimating their intention to erect a building on their land and giving a rough sketch plan of the land intended to be built upon. In the notice the plaintiffs did not expressly state their intention to build the wall in dispute. The municipality wrote to plaintiffs requiring them to furnish a plan showing the design of the proposed building with its measurements. After a month of this requisition the plaintiffs built a wall on their land without furnishing the plan as required. Thereupon the municipality demolished the wall after the plaintiffs had failed to comply with the notice calling upon them to demolish the wall as built without permission. Thereupon the plaintiffs sued the municipality for wrongful demolition of the wall:

Held, that the plaintiffs had contravened the provisions of clause (1) of S. 33 of Bombay Act, VI of 1873, inasmuch as they had built the wall without giving any notice or without affording the information required by the municipality. The municipality was therefore justified in ordering the wall to be demolished. 19 Bom. 27.

Building
scheme

192. (1) The committee may, and if so required by the Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may, among other things, provide for the following matters, namely,— ✕

(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality, and of the use to which they may be put;

(b) the prescription of a building line on either side or both sides of any street existing or proposed ; and

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alter) dated 18-7-36,

other things,

(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed ²⁰ ~~forty~~ per cent. and the amount transferred without payment shall not exceed ¹⁰ ~~twenty~~ per cent. of any one owner's land within the municipal area.

(2) When a scheme has been drawn up under the provisions of sub-section (1) the committee shall give public notice of such scheme and shall at the same time intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

(3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Commissioner, who may, if he thinks fit, return it to the committee for re-consideration and re-submission by a specified date; and the Commissioner shall submit the plan as forwarded, or as re-submitted, as the case may be, with his opinion to the local Government, who may sanction such scheme, or may refuse to sanction it, or may return it to the committee for re-consideration and re-submission by a specified date.

(4) If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to re-submit a scheme by a specified date when required to do so under sub-section (3) or re-submits a scheme which is not approved by the local Government, the Commissioner may draw up a scheme of which public notice shall be given by notification and by publication within the municipality together with an intimation of the date by which any person may submit in writing to the Commissioner any objection or suggestion which he may wish to make, and the Commissioner shall forward with his opinion any such objection or suggestion to the local Government, and the local Government may sanction such scheme as originally notified or modified in consequence of any such objection or suggestion, as the local Government may think fit; and the cost of such scheme or such portion of the cost as the local Government may deem fit shall be defrayed from the municipal fund.

(5) When sanctioning a scheme the local Government may impose conditions for the submission of periodical reports on the progress of the scheme to the Commissioner or to the local Government, and for the inspection and supervision of the scheme by the local Government.

Notes.

S. 192 of the Act III of 1911 has been deleted and the present section has been substituted by S. 74 of the Punjab Amendment Act, III of 1933. It will be noticed that "Explanation" to S. 193 has also been deleted by the Amendment Act, III of 1933. This explanation had become unnecessary in view of the enactment of the present section. It secures the same object in a more detailed and better way.

In the 2nd Edition of this book the following remarks were made under Explanation to S. 193:—

When submitting the proposed bill for Act III of 1911 for approval to Government of India the following reasons were given for the change intended to be introduced by clause 184 (subsequently enacted as S. 193):—"Opportunity has also been taken in clause 184 to make it clear that the particular objection to the scheme of construction of a proposed building are not the only grounds on which sanction to its erection may be refused and that the responsibility of a committee to the public extends to the reservation of open sites and to the prevention of overcrowding independently of the question of the undesirability of any particular building in question." Scheme is a term generally employed in Town Planning or Town Improvement Acts. There is now a Town Improvement Act in force in the Punjab. In the absence of any provisions in the Municipal Act indicating the nature and scope of the scheme as contemplated by the Explanation and in the absence of any provisions laying down the procedure for getting such a scheme sanctioned, it is impossible to assume that the scheme as contemplated is on all fours with schemes sanctioned under Town Improvement Acts. The nature and scope of the scheme is to be sought in the reasons given when sanction for contemplated bill was obtained from the Government of India. The scheme must have for its object the prevention of overcrowding in a particular area or the securing of sanitary facilities for the residents of the area affected by the scheme; the scheme should contemplate improvements as can be secured under the provisions of the Municipal Act.

It is not known if any scheme as contemplated by the Explanation has so far been sanctioned by the Commissioner for any municipality. The lay-out plans sanctioned by the Commissioner for certain municipalities are not strictly speaking the schemes mentioned in S. 193. In this connection the Government Resolution on the Sanitary Conference published in P. C. Proceedings No. 2320, dated 11th August 1914, may be referred to. The Conference, amongst other matters, dealt with the two following problems: (1) extension of existing towns, (2) improvement and opening of insanitary areas in the old

towns. The Government pointed out in the said resolution that the committees had done very little so far to cope with the evils arising from congested areas and insanitary buildings, from narrow and tortuous streets and lack of light and air. They further pointed out that the tendency of the wealthier inhabitants to move out had not been properly controlled and that consequently the insanitary features of the old town were being reproduced in the suburbs. The lay-out plans refer to the first problem while schemes relate to the second problem referred to in the Government resolution.

In Lahore and probably in other large towns the committees used to submit lay-out plans for future extensions of the town in unbuilt areas. This was not a scheme strictly speaking for which commissioner could be asked to accord his sanction. There was no provision for inviting objections from the public concerned. In some cases these so-called lay-outs worked great hardships in individual cases and the influential people sometimes succeeded in getting the lay-outs amended to safeguard their individual interests, constructions in breach of these bye-laws were often made and in no case the committees seem to have succeeded in removing such breaches of their lay-outs.

The present provision removes these defects. Both problems referred to in Government Resolution published in P. C. proceedings No. 2320, dated 11th August 1914 have been dealt with.

Schemes.—The attention of the readers is invited to the provisions of the Town Improvement Act of the Punjab and of similar other provincial town planning Acts where various schemes possible for the town are described. Under Punjab Town Improvement Act, 1922, the following schemes are contemplated:—

(a) General improvement scheme under S. 22 (1) which can be framed under the following circumstances:—

22. (1) Whenever it appears to the Trust that—

- (a) any buildings which are used or are intended or likely to be used as dwelling-places within its local area are unfit for human habitation, or
- (b) danger is caused or is likely to be caused to the health of the inhabitants of such local area or part thereof by reason of—
 - (i) the congested condition of streets or buildings or groups of buildings in such local area or part, or
 - (ii) the want of light, air, ventilation or proper conveniences in such local area, or part, or

- (iii) any other sanitary defects in such local area or part,

the Trust may pass a resolution to the effect that such local area or part is an insanitary locality and that "a General Improvement Scheme" ought to be framed in respect of such locality and may then proceed to frame such a scheme.

(b) A rebuilding scheme to be framed under S. 22 (2) under the following circumstances:—

(2) Whenever the Trust declares any local area or part thereof to be an insanitary locality within the meaning of this section, and is of opinion that having regard to the comparative value of the buildings in such local area or part and the sites on which they are erected it is undesirable to frame a General Improvement Scheme and the most satisfactory method of dealing with the local area or any part thereof is "a Rebuilding Scheme," it may proceed to frame such a scheme, which may provide for the reservation of streets and the enlargement of existing streets; relaying out of the sites of the local area or part thereof upon the streets so reserved or enlarged; the demolition of existing buildings and their appurtenances upon such sites; and the erection of buildings in accordance with the scheme.

(c) Street schemes and deferred schemes to be framed under S. 23 under the following conditions:—

23. (1) Whenever it appears to the Trust that for the purpose of—

- (i) providing building sites, or
- (ii) remedying defective ventilation, or
- (iii) creating new or improving existing means of communication and facilities for traffic, or
- (iv) affording better facilities for conservancy

within its local area or part thereof it is expedient to lay out new streets, thoroughfares and open spaces, or alter existing streets, the Trust may pass a resolution to that effect, and shall then proceed to frame "a Street Scheme" which shall prescribe improved alignments for streets, thoroughfares and open spaces for such local area or part as the Trust may deem fit.

(2) Whenever it appears to such Trust that for any of the purposes mentioned in sub-section (1) within its local area or part thereof it is expedient to provide for the ultimate widening of any existing street by altering the existing alignments to improved alignments to be prescribed by the

Trust, but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments, the Trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and forthwith proceed to frame a "Deferred Street Scheme" prescribing an alignment on each side of such street.

(d) Development or expansion schemes under S. 24 are as follows:—

24. (1) The Trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare "a Development Scheme," and

(2) such Trust may, if it is of opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto, within the local area of such Trust prepare "an Expansion Scheme."

(3) "A Development Scheme" or "an Expansion Scheme" may provide for the lay-out of the locality to be developed, the purposes for which particular portions of such locality are to be utilised, the prescribed street alignment and the building line on each side of the streets proposed in such locality, the drainage of insanitary localities and such other details as may appear desirable.

(e) Housing accommodation schemes are framed under S. 25 as follows:—

25. If the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of inhabitants within its local area such Trust may frame "a Housing Accommodation Scheme" for the purpose aforesaid:

Provided that if the local Government are satisfied that within the Trust area it is necessary to provide housing accommodation for industrial labour, the local Government may by order require the Trust to frame a scheme under this section and to do all things necessary under the Act for executing the scheme so made; and if the Trust fail within such time as may be prescribed to frame a scheme to the satisfaction of the local Government and to execute it, the local Government may either by order require the Municipal Committee to frame and execute a scheme, or themselves frame a scheme and take such steps as are necessary to execute it. All expenses incurred by the local Government or by the municipal committees in the exercise of the powers conferred upon them by this section shall, in the first instance, be paid out of provincial revenues, but the amount so spent shall be

recoverable from the Trust as if it were a debt due to Government and the local Government may attach the rents and other income of the Trust. The provisions of S. 72 shall also apply to all moneys so paid.

(f) Re-housing scheme.—This is a scheme under S. 26 under the following conditions:—

26. Whenever the Trust deems it necessary that accommodation should be provided for persons who are displaced by the execution of any scheme under this Act, or are likely to be displaced by the execution of any scheme, which it is intended to submit to the local Government for sanction under this Act it may frame "a Re-housing Scheme," for the construction, maintenance, and management of such and so many dwellings and shops as ought, in the opinion of the Trust, to be provided for such persons.

(g) Combination schemes.—This is contemplated under S. 28 (1). This scheme may combine one or more types of schemes or any special features thereof.

Schemes Nos. (a), (b), (c) are schemes for built areas, scheme (d) is exclusively for unbuilt areas, while schemes (e) and (f) are combination of both.

Section 192 does not give an exhaustive list of matters that may be provided in the schemes. See S. 28 (2) of the Punjab Town Improvement Act giving details of several other matters which may be provided in the scheme.

Sub-clause (c) of Section 192.—This is a provision which apparently appears to be unique; the scheme for unbuilt area will certainly raise prices of undeveloped land and on the principle of taxation of "unearned increments," the taking of 20 per cent. of land without compensation is justified. When owners of undeveloped areas prepare lay-out schemes the land for streets and other public purposes has to be left out by the owners who make new streets under S. 170-B-F; the same object is being secured by S. 192 (1) (c).

Punishment
for erection
or re-erection
of a building
on sanction
of a building
scheme under
S 192

192-A. If under the provisions of any scheme sanctioned under Section 192 the erection or re-erection of buildings in a specified area for a specified purpose is prohibited, any person who after such scheme is sanctioned uses any building for such purpose shall and unless it was used for this purpose before the scheme was sanctioned on conviction by a magistrate be liable to fine which may extend to five hundred rupees, and if after such conviction he continues to use such building for such purpose he shall be liable to fine which may extend to fifty rupees for every day during which such use continues.

Notes.

This section has been introduced by S. 75 of the Punjab Amendment Act, III of 1933. Under S. 192 sub-clause (a) the use of buildings erected or re-erected after the sanction of a scheme can be restricted. The use of such buildings for prohibited purposes is made punishable under the Act.

The committee is bound to refuse the erection or re-erection of buildings which contravenes the scheme sanction under S. 192 while when such a building has been erected or re-erected against a scheme the committee is enjoined to require the demolition of such a building.

193. (1) The committee or executive officer shall refuse to sanction the erection or re-erection of any building in contravention of any bye-law made under sub-section (1) of Section 190 or in contravention of any scheme sanctioned under sub-section (3) or sub-section (4) of Section 192, unless it be necessary to sanction the erection of a building in contravention of such a scheme owing to the committee's inability to pay compensation as required by Section 174 for the setting back of a building.

Power of
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to
sanction
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(2) The committee or executive officer may refuse to sanction the erection or re-erection of any building for any other reason, to be communicated in writing to the applicant, which it or he deems to be just and sufficient as affecting such building, or if the land, on which it is proposed to erect or re-erect such building, is Government property or vests in the committee, and the consent of Government or the committee has not been obtained, or if the title to the land is in dispute between such person and the committee or the Government.

(3) Subject to the provisions of sub-section (1) the committee or executive officer may sanction the erection or re-erection of any building either absolutely or subject to such modifications in accordance with the bye-laws and rules as it or he may deem fit.

(4) Notwithstanding anything contained in sub-section (1) or sub-section (2) but subject to the provisions of sub-section (2) of Section 190, if the committee or executive officer neglects or omits, within sixty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within one hundred and twenty days, if the notice relates to a building on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months, to pass orders sanctioning or refusing to sanction such erection or re-erection, such erection or re-erection

shall, unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee be deemed to have been sanctioned, except in so far as it may contravene any bye-law, or any building or town-planning scheme sanctioned under Section 192:

Provided that should a resolution conveying or refusing such sanction be suspended under Section 232, the period prescribed by clause (4) shall commence to run afresh from the date of communication of final orders by the Commissioner or local Government under Section 235:

Provided further that if not less than one-fifth of the members present vote against a resolution conveying sanction, the sanction shall be deemed not to have been conveyed until after the lapse of fourteen days from the passing of the resolution.

Notes.

S. 193 has been repealed and re-enacted with certain modifications; therefore under S. 6 of the General Clauses Act of 1898 the reference to S. 193 in the Executive Officers Act shall be construed as references to S. 193 as amended unless a different intention appears.

Executive Officers Act.—In municipalities to which the Executive Officers Act has been extended S. 193 is deemed to have been amended as indicated in S. 13 of the Executive Officers Act. S. 193 as amended by the Executive Officers Act should be read as if the words in italics had been inserted in the section though it does not appear that the 2nd proviso to sub-section (4) was intended to be amended by the Executive Officers Act.

S. 193 as amended by the Executive Officers Act before the present amendment read as follows:—

193. Within two months after the receipt of the notice, if any, required by sub-section (2) of Section 189, the committee *or executive officer* may refuse to sanction the building or may sanction it either absolutely or subject to such modification as it *or he* may deem fit in respect of all or any of the matters specified in sub-section (3) of that section; and the person erecting or re-erecting any such building as aforesaid shall comply with the sanction of the committee *or executive officer* as granted in every particular:

Provided that should the committee *or executive officer* in any case except that in which notice has been given of an intention to build upon land belonging to the committee neglect or omit for two months after the receipt of a valid notice to make and deliver to the person who has given such notice an order of sanction or refusal in respect thereof, it *or he* shall be deemed to have sanctioned the proposed building absolutely.

Explanation.—The committee or executive officer may refuse to sanction the erection or re-erection of any building—

- (i) for any reason it or he may deem to be just and sufficient as affecting the said building, or
- (ii) in pursuance of a general scheme sanctioned by the Commissioner restricting the erection or re-erection of buildings or any class of buildings—
 - (a) for the prevention of overcrowding, or
 - (b) in the interests of the residents within such limits, or
 - (c) in the interests of the public generally, or
 - (d) for any other public purpose.

The committee or executive officer may also refuse permission if there is any dispute between the committee and the applicant as to the title of the land on which it is proposed to erect the building, until such dispute is decided.

Notes.

Analogous Law:—

Ss. 237 & 238, Bengal District Municipal Act, 1884	cipal Act, III of 1923.
Ss. 318 & 319, Bengal Municipal Act, XV of 1932.	S. 181, Cantonment Act, II of 1924.
S. 188, Behar and Orissa Municipal Act, 1922.	S. 99, Central Provinces Municipal Act, II of 1922.
Ss. 123 & 184, Bombay Municipal Boroughs Act, 1925.	Ss. 237 & 238, Madras City Municipal Act, 1919.
S. 96 (2), Bombay District Municipal Act, III of 1901.	Ss. 201-4, 210 & 212, Madras District Municipal Act. V of 1920.
Ss. 345-6, Bombay City Municipal Act, III of 1888.	S. 153 & 170, Rangoon City Municipal Act, 1922.
S. 100 (2) & (5), Burma Municipal Act, III of 1898	S. 180, U P. Municipalities Act, 1916.
Rules 57-59 of Schedule XVII & S. 324 of Calcutta City Municipal Act, 1884	<i>English Law:—</i>
	S. 158, Public Health Act, 1875.

Changes introduced by the Amendment Act, III of 1933:

1. The Explanation has been repealed in view of introduction of S. 192.

2. The committees have been enjoined to refuse sanction of erection or re-erection of any building where such building contravenes any bye-laws under S. 190 (1) or contravenes any scheme sanctioned under S. 192 unless contravention of the scheme involves payment of such compensation owing to action under S. 174 as the committee is unable to pay.

3. The committee is bound to disclose reasons for refusal of sanction.

4. The committees have also been empowered to refuse sanction where the building is intended to be erected or re-erected on Government property.

5. Sanction need not be conveyed within 60 days or 120 days, as the case may be, if the intending building contravenes any bye-laws under S. 190 or contravenes any scheme under S. 192.

6. The period from two months has been changed into 60 days or 120 days in certain specified cases.

7. The erection or re-erection can also be refused if there is a dispute as to title between the applicant and Government.

8. In cases where sanction is suspended under S. 232 the period will begin afresh from the date of communication of orders under S. 235.

9. Sanction granted cannot be availed of for fourteen days if not less than one-fifth of the members present at a meeting vote against the sanction.

Reasons for refusal must be not *ultra vires*.—Although a civil court is not ordinarily entitled to decide the question of sufficiency or otherwise of the reasons given by the municipal committee for refusing sanction to build it is entitled to see whether the reasons for which sanction has been refused are not *ultra vires* or are not arbitrary or capricious; and if a committee acts *ultra vires* or arbitrarily or capriciously in refusing sanction a civil court is competent to give relief to the person aggrieved against its sanction. 133 I. C. 549; 1932 Lah. 59.

Jurisdiction of Civil Courts.—In P. R. 24 of 1890 Cr. it was held that the sanction of the committee or refusal to sanction was absolutely at the discretion of the committee and as long as that discretion was exercised *bona fide* no court had power to control that discretion. The opinion of the committee as to the injuriousness of the proposed erection or re-erection is conclusive and is not liable to be set aside because it might be proved to be an incorrect opinion.

Though the committee are now required to communicate the reasons for refusal, courts will not be entitled to interfere in the discretion of the committee and as to the sufficiency of the reasons advanced, but will have power to interfere if the sanction is refused on grounds on which sanction cannot be refused.

Control on re-erections.—In a case plaintiff sued the municipal committee that he had a right to re-erect a mosque without interference of the committee. The suit was

dismissed in the ground that plaintiff's remedy was by way of appeal under S. 318 (=S. 225 of the Punjab Municipal Act) and that the civil court had no jurisdiction to entertain the suit. It was *held* that the suit was of a civil nature, and that if a municipal board assumes a power or authority which the law has not given, or acts illegally under cover of, and in excess of its, statutory powers its action can be challenged in a civil court; but if it confines itself within its statutory powers such exercise of the powers cannot be questioned in a civil suit. It was also contended that the portion re erected could not be demolished. It was *held* that the board had a controlling voice not only in cases of erection of a new building or new part of a building but also in cases where a building was sought to be re-erected or a material alteration was to be made. 1929 All. 756 (2).

Jurisdiction of Civil Courts – Remedies open to applicants for sanction.—A person aggrieved by any resolution or order passed by the municipal committee is entitled to claim redress in the civil court if he can satisfy it that the act of committee is arbitrary, oppressive or *ultra vires*.

A person intended to erect a *chabutra* in front of his house and gave notice of the intention to the committee under the provisions of S. 189. The committee refused the permission on the ground that the title on the land on which it was proposed to build, vested in the committee. He brought a suit for an injunction against the committee restraining it from preventing him from building a platform on the land owned and possessed by him: *Held* that the relief claimed implied a prayer for the declaration of the person's title and the court should adjudicate on the question of title in the land and if it was found to vest in the person, he was entitled to the injunction prayed for. 1929 Lah. 774; 115 I. C. 755.

Under a corresponding section of the Bombay District Municipal Act it was *held* that the municipal commissioners have discretion given to them for issuing such orders as are necessary when a person applies for permission to erect a proposed building. The civil courts can interfere only when the commissioners exercise the authority thus given to them in a capricious, wanton and oppressive manner.

The plaintiff was the owner of two houses on each side of the passage of an open square containing three or four other houses. He proposed to connect the two houses by building a storey across the passage at such a height as not to interfere with the passage of those who were entitled to go to and fro. He applied to the local municipality for per-

mission to build in the manner he proposed. The municipality refused the sanction on the ground that it was likely to interfere with the access of light and air to the neighbouring houses.

The plaintiff thereupon sued the municipality to establish his right to build the proposed structure. It was contended for the plaintiff that the municipality ought not to have refused permission in the interests of the neighbouring householders, who were well able to protect their own rights in case of injury:

Held that the suit would not lie, as the order of the municipality refusing permission was not an unreasonable one under the circumstances of the case. 12 Bom. 490.

See on the same subject P. R. 52 of 1900; P. R. 45 of 1905; 2 I. C. 357; P. R. 58 of 1907; 6 I. C. 431.

A person has no right to build balconies to his house projecting over his own land after a municipality refuses to grant permission to build them; and having once put up such balconies he is not entitled to obtain from the civil court an injunction to restrain the municipality from removing the balconies erected in defiance of their refusal. 2 Bom. L. R. 572.

Where the plans are refused by the committee and an appeal is also dismissed, no suit for sanction of the plans lies. So long as the committees act honestly their decision, provided it is not in excess of their authority, is not capable of being reviewed by courts, and if the plans are rejected *mala fide* the aggrieved party has no remedy by a regular suit. His only remedy is an application for an order to compel the committee to hear the matter in the manner provided by the law. 22 I. C. 388.

Remedy by mandamus.—Courts have no power to compel committees to grant sanction of plans. Courts in the mofussil have no power under S. 45, Specific Relief Act. The legislature have deliberately withdrawn from the courts in this country that power, which is possessed by the courts of justice ‘at home,’ to compel a municipal corporation to do their duty and to restrain them from doing that which it is not in their province to do,—a power which has been reserved to the High Court in its ordinary original jurisdiction with respect to the presidency towns, but which has been withheld in respect of any of the municipalities in the mofussil. 17 Cal. 329.

Principles of *ultra vires*.—When the action of the municipality is beyond the scope of the authority given by the Acts the civil courts have power to interfere.

Plaintiff applied to rebuild certain *kothries* the doors of which were to open on the adjoining land belonging to the committee. The committee granted the application on the condition that the plaintiff might build on his own land, but that he should not open any doors on the municipal land:

Held, that as the municipal committee had no power when dealing with public matters to use its statutory powers to protect its private rights, its action in restraining the plaintiff from opening the doors on the municipal land was *ultra vires*. Civil courts have jurisdiction to set aside and restrain all such acts of a municipal committee which do not fall within the scope of the authority given to it by the Municipal Act. P. R. 45 of 1905.

Plaintiff sued to obtain a prohibitory injunction to restrain the defendant municipality from removing a balcony with overhanging eaves which the plaintiff had constructed over the *otla* of his house abutting a private street. The municipality contended that the plaintiff had disregarded the condition under which he obtained their permission to construct the balcony and that, therefore, under the Bombay District Municipal Act, VI of 1873, S. 33 (3) and a bye-law framed by the municipality, they were entitled to require the removal of the structure completed in contravention of municipality's orders, while the plaintiff contended that as the balcony was not over a public street he was entitled to build it:

Held, that having regard to the terms of S. 33 of the Bombay District Municipal Act, every municipality has the power given to it by the legislature to regulate the construction of buildings whether they abutted on a public or a private street, and action taken under the section by the municipality, unless it be inconsistent with its provisions, would be legal, provided it is reasonable. The mischief intended to be struck at by the section is that arising from the erection of buildings without proper regard to public health and sanitation, the intention of the Act being to make the municipality trustees of the public in all sanitary matters. Plaintiff having failed to show that the action of the municipality complained of was either illegal or *ultra vires*, the injunction sought for was not granted. 27 Bom. 221.

In imposing conditions to the sanction the municipality has no power to compel persons to do something quite foreign to the object of the application and to the purpose and object for which the power of sanction was given. P. R. 27 of 1901.

Erection of a new verandah on the site of an old verandah which has ceased to exist is an erection within the meaning of S. 237 of the Bengal Municipal Act, III of 1884, and liable to be demolished if erected in contravention of municipal sanction.

A municipal committee which can sanction a building absolutely or with restrictions in accordance with rules which it is empowered to make cannot, unless it has made such rules, impose any restriction and is bound either to refuse sanction or grant it absolutely and without reservation.

Where sanction to build is given by a municipality subject to an *ultra vires* restriction, the restriction is not binding and may be disregarded. 63 I. C. 355.

Clauses 1 and 2. Reasons for refusal—In view of the amendment introduced by S. 76 of the Punjab Amendment Act the committees have to communicate the reasons for refusal. P. R. 24 of 1890 Cr. laying down that the committee is not bound to set forth its reasons for refusing sanction is no longer applicable. Following are the reasons for which the committee are empowered to refuse sanction:—

1. Non-compliance with bye-laws made under S. 190 or contravention of any scheme sanctioned under S. 192.

2. For any just and sufficient reason as affecting the building to be erected or re-erected.

3. If the proposed building is to be erected or re-erected on land which is Government property or which vests in the committee.

4. If there is a dispute as to title of land to be built upon between Government or committee and the person applying for erection or re-erection. See 1932 Lah. 59 but this dispute must be with the committee or Government. A dispute between applicant and a third party will not justify refusal. Under reason No. 2 the committees have very wide discretion to sanction or refuse if, in the opinion of the committee, there is just and sufficient reason affecting such building.

Explanation.—The Explanation to S. 193 as it stood before amendment in 1933 has been omitted and incorporated in S. 192.

Bye-laws under S. 190 and powers of committees.—Where bye-laws under S. 190 have been framed the municipal committee has power to make standing orders with regard to specifications and designs of all buildings to be erected in the municipal area, and if the specifications and designs of a proposed building do not comply with the

bye-laws under S. 190 the proposal shall be rejected. Where such bye-laws have not been framed each application will be taken up on its merits and the intending builder is under no obligation to see that his designs conform to any particular regulation. But the absence of bye-laws under S. 190 does not prevent a municipality from refusing permission to erect or re-erect a building under S. 193 on the points mentioned under S. 190. 49 I. C. 463.

Power of refusal.—No power is given to a committee absolutely to deprive owners of the legitimate use of their land. The object of the section requiring notice of erection or re-erection of a building is to ensure safety and sanitation of the building and the suitability of its structural appearance relating to the neighbouring buildings and also to conserve the health, safety or convenience of the public or of persons dwelling in the vicinity. 6 I. C. 431.

S. 180 of the Madras District Municipalities Act corresponds, though not exactly, to S. 193 of this Act. Under the Madras Act it has been held that the section does not give power to municipalities to deprive owners of the legitimate use of their land. The object of the section is to ensure the safety and sanitation of the buildings to be newly erected. Where, therefore, the municipality allowed sanction on a portion only of the land as the remaining portion was required for widening a street, the order of sanction was held to be illegal and the owner of the land building on the entire land was held to have committed no offence as the committee could acquire the portion required under Land Acquisition Act. 16 Mad. 230. [*Distd.* in 27 Bom. 221.]

The municipality have no power on an application to build, to pass an order which practically amounts to a refusal. They would be entitled to direct that the proposed building should be set back to a certain distance from the street, but they would not be entitled to order that on each side of the building open spaces should be left with the object of preventing the applicant from building at all.

The municipality must acquire the land in the private way if they wish to create open spaces. 1925 Bom. 345 I. C. 948.

Under a corresponding section of Bombay District Municipal Act it has been held that the section does not empower the municipality to deprive owners of the legitimate use of their land or to refuse permission to build at all, but it does confer on the municipality a very wide power of regulating buildings. The object of the power is to secure the safety and sanitation of the buildings to be newly erected,

This power though an encroachment on private rights is not inconsistent with the Act. 44 I. C. 346.

Under the Punjab Municipal Act, however, the municipalities have much wider powers, and under these powers they can absolutely refuse sanction to a building on grounds mentioned in the section.

Cowshed is a building; the fact that the municipality were willing to approve of the lease of the land for building purposes would in no way estop them from refusing to sanction any particular erection thereafter and if circumstances had changed and had become, in their opinion, inexpedient to allow any building whatever on the site. 1926 Nag. 281; 92 I. C. 796.

Plaintiff wanted to build another storey on his western wall, and got permission. According to a compromise in a dispute with his neighbours he agreed to pull down the old wall on which he was going to build and to build further back. The municipal committee objected to this. The plaintiff therefore began to follow out his old plan. The municipality again objected:

Held, the objection was factious. The municipality was not entitled to object to the rebuilding of the old wall where it stood with the addition to which it had given permission. 1922 Bom. 344.

Implication of sanction.—A sanction, express or implied, to the erection of a specified building necessarily carries with it a right to put up such ordinary scaffolding as would be necessary under ordinary circumstances for the execution of the work. 29 All. 737.

Revocation of sanction and damages.—There is no provision in the Act for cancellation of the sanction once given: P. R. 52 of 1900. The sanction to build given under the Calcutta Municipal Act, II of 1888, was *held* to be absolute and the corporation was held not entitled to revoke or withdraw it. The corporation must be taken to be bound by the acts of its officers. Where the corporation has granted sanction to the grantee after the premises had been duly inspected and approved of by its officers for erecting a mill on his giving an undertaking, it has no right, in an action of damages caused by the withdrawal of the sanction to plead in defence that the officers who inspected the site made a mistake and that the sanction was not binding. The corporation was held liable for damages incurred by plaintiff through illegal withdrawal of sanction. 30 Cal. 317.

An order once passed under S. 193 cannot be rescinded or varied from time to time. The whole tenor of sections

dealing with the sanction of new building shows that what is contemplated is an application by the citizen, a period of time during which the municipality should consider the merits of that application and then issue the orders once and for all. Hence a notice revoking or modifying a sanction once granted is illegal and prosecution based on such notice is illegal. 39 I. C. 298.

If the sanction is by a sub-committee and the order of sub-committee is open to revision or appeal, the sanction granted by a sub-committee can be set aside by the General Board. 1922 Bom. 247.

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An order granting permission to a person to build a privy on his own land is final under S. 193 and any subsequent order prohibiting him from proceeding with the construction of the privy is not justified under any section of the Act. Under S. 125, however, the demolition of the privy can be enforced Cf. 47 I. C. 145; 42 Bom. 629.

A permission to build granted cannot be revoked. The question of defective title of the applicant is irrelevant in this enquiry. 61 I. C. 428; 45 Bom. 797.

Under S. 193-A now sanction can be modified.

Implied sanction.—Where a municipal committee fails to pass orders of sanction or refusal within two months of the receipt of a valid notice under S. 189, the applicant is warranted to build his house and must be deemed to have obtained the sanction. P. R. 9 of 1901 Cr.

The tacit sanction under the proviso covers only erections or re-erections of buildings but does not cover structures falling within the meaning of the S. 172. P. R. 62 of 1907 & 92 I. C. 765.

A person building according to his own plans after the prescribed period after his submission of plans for the sanction of the committee, cannot be convicted of non-compliance with notice issued under S. 195. Cf. 5 C. W. N. 42.

When a person giving a notice under S. 189 for re-erection of a building begins to re-erect the building after waiting for sixty days he cannot be stopped from building the erection, and if he suffers damages for such illegal stoppage, he can maintain a suit for damages. 37 All. 220; 28 I. C. 143.

If within the period of sixty days the municipal council does not grant the license, the applicant can proceed to construct, re-construct or extend a wall or building, as the case may be, but such construction must be in accordance with

the plan which accompanied his application. *Cf.* 1927 Mad. 241 98 I. C. 654.

In the case of tacit sanction the builder must strictly adhere to his plans, otherwise the tacit sanction will not avail.

Commencement of the period of two months.—The period of two months during which the committee should sanction or refuse the application to build, is to be computed from the date when complete plans and specifications are submitted in such a form as to make them possible of being considered by the committee. *Cf.* 5 C. W. N. 42.

Where the sanction is suspended under S. 232 of the Act the sanction will start afresh from the date of communication of final orders under S. 235.

Nature or extent of orders under the section.—It will be observed that the orders which the committees are empowered to pass on building applications may take one of four forms: (a) the committee must refuse; (b) the committee may refuse the building; or (c) it may sanction the building; or (d) may sanction the building subject to certain modifications. Any order which does not fall under one or other of these forms will not be a legal order. The practice of some municipalities to pass intermediary orders before final refusal or sanction has no justification in law. An order in the form "refused and referred to some committee for some purpose" is not a final refusal especially as the plans keep on being considered without any fresh application for the purpose. It must also be observed that all enquiries must be completed within the prescribed period and orders conveyed must enable the owner to avail of the sanction immediately on the expiry of the period prescribed. The practice of the Lahore Municipality to sanction the building subject to alignment to be given by some municipal official is not a legal order especially when the committee cannot, and does not, lay down the alignment before the expiry of the period prescribed for sanction. In the Punjab period during which the committees have to pass final orders is the longest and it is to be expected that all enquiries would be completed within this period. If any alignment has to be laid down it must be done before sanction is conveyed and the alignment should either be marked on the plan or marked on the spot within the prescribed period. Conveying sanction subject to alignment to be given afterwards and withholding the return of the plans is not an order contemplated under the Act.

Clause 3. Sanction absolute or subject to conditions.—The word "absolutely" is used as alternative to "subject to such

modification." It does not imply that the municipal committee has the unrestricted power to refuse to sanction a building, or that it is not bound to disclose its reasons for such refusal. Moreover the word "absolutely" does not qualify "refuse to sanction," but it governs the power of the committee to sanction the building. 1932 Lah. 59; 133 I. C. 549.

Sanction subject to conditions.—A condition that a certain wall in the plan of the proposed building should be put back a certain distance was *held* to be within the powers of the committee to impose. A committee may not have the power to order demolition of an existing wall but when an application to erect a new building including the wall as an integral part of it, is made the committee has power to order its putting back. 1924 Lah. 393; 71 I. C. 775.

Under a corresponding provision of the Madras District Municipal Act it was *held* that the municipal committee cannot insist upon any person who asks for permission to erect a building upon his own land leaving a portion of it for the use of the public when it grants sanction. It is *ultra vires* for the municipal committee to impose such a condition while sanctioning the same. 1927 Mad. 241; 98 I. C. 654.

Note.—A set back may be required under the Punjab Municipal Act but if it is desired that the land left by the set back should form part of a street compensation shall have to be paid.

A drain passed through private property carrying the drainage water of the street. Owner applied to build a house and to roof the drain. Permission was granted subject to the condition that the drain should not be blocked and that a space of three feet wide around the drain should be left vacant for the sweeper to come and clean the drain. The conditions laid down were *held* to be accessory to the right of the committee to the drain and it was *held* that the committee was entitled to demand reasonable convenience for cleaning and supervising the drain. 1927 Lah. 891; 100 I. C. 813.

The building of a verandah is an erection or re-erection within the meaning of S. 237 of the Bengal Municipal Act, and, therefore, sanction is necessary. But unless rules are made under S. 241, the municipality must either grant or refuse sanction without reservation where no such rules are framed; a sanction with reservation is *ultra vires* and can be disregarded. 1922 Pat. 118; 63 I. C. 355.

Sanction without reservation - Subsequent modification.—When a cantonment authority grants permission without

any reservation so far as the use of the building for shops was concerned, its subsequent resolution modifying the previous one by adding the words "shops rejected" is *ultra vires*. 1930 Lah. 822; 126 I. C. 525.

Appeal or other remedies against refusal.—Where plans have been rejected by the committee and the appeal to the commissioner has been rejected, the owner of the proposed building has no remedy in a civil court unless he proves that the action of the committee is illegal or *mala fide*. This remedy in the civil courts is only possible where application under S. 45 of the Specific Relief Act cannot lie.

It would seem, however, where S. 45 is not applicable that the only relief which the courts can grant is to set aside the order of refusal as *mala fide* and leave the committees to pass orders according to law. 40 Cal. 836; 22 I. C. 388.

A person served with a notice under Ss. 195 and 172 for re-erecting a house against express conditions of sanction under S. 193 and also for constructing structures without written permission overhanging a street cannot question the validity of the notice in a civil suit. His proper remedy is an appeal under S. 225. 35 I. C. 222.

The remedy of a person aggrieved by an order of a municipality refusing to give him permission to repair and re-erect his gallery and arches, is an appeal as provided in S. 225 of the Act and not a suit for perpetual injunction and damages. Cf. 25 I. C. 207; 36 All. 329.

Where plaintiff seeks to set aside the order of the board directing the demolition of the building alleged to be constructed without board's sanction and contrary to the sanctioned plan no suit lies in a civil court. His remedy is to appeal from the order of the board under S. 225 within thirty days from the date of the direction or order. Cf. 1926 Oudh 413; 95 I. C. 122.

Whether the refusal is proper or improper it cannot be questioned in a civil court. The only remedy of a person aggrieved is to move the appellate court under S. 225. Any order passed by the appellate court is final and cannot be questioned in any other manner or by any other authority. Cf. 1926 All. 18; 88 I. C. 814.

A refusal to sanction the erection or re-erection of a building is not *ultra vires* of a municipal board. Where notice under S. 189 having been given the municipal board exercised its discretion under S. 193 in refusing the building, the plaintiff's only remedy if he feels aggrieved by the

order is to appeal to the deputy commissioner under S. 225. If the order of the municipal board is illegal he may ask the deputy commissioner to refer the point to the High Court. Where this has not been done and the deputy commissioner has confirmed the order of the municipal board that order is final and cannot be questioned in any other manner or by any other authority. Hence under such circumstances the plaintiff cannot bring a suit in a civil court asking an injunction restraining the municipal board from interfering with his construction. Cf. 1925 All. 699; 88 I. C. 899.

Note.—In the United Provinces Act there is an express provision limiting the remedy to appeal, *vide* S. 231 of the United Provinces Act, II of 1916. There is no corresponding provision in the Punjab Municipal Act where failure to appeal is no bar to the suit in a civil court if the action of the municipal committee is *ultra vires* or unreasonable and arbitrary, *vide* P. R. 62 of 1919. 1926 Oudh 413 *supra*. See also 1932 Lah. 597.

Remedies of the public against buildings built without sanction or against the bye-laws.—If the committee fails to take any action against the offending building or is otherwise powerless to deal with such buildings it would appear that the public would have no remedy against the offending building unless the building constitutes a public nuisance. In case the building constitutes a private nuisance or interferes with the legal rights of any individual he will have a cause of action. In England and presidency towns, however, the Attorney-General has authority to restrain what are called nuisances in law if the local authority has not sufficient power to enforce compliance with law. The subject is fully discussed in 5 I. C. 213, in which it was remarked that there are two kinds of public nuisances: actual and constructive, or public nuisances in fact and public nuisances in law. What is meant by a constructive or public nuisance in law is that which is only wrong because it contravenes the provisions of an Act, and the test in all those cases is whether if there were no Act the public nuisance complained of would exist at all. 5 I. C. 213; 12 Bom. L. R. 274.

S. 91 of the Code of Civil Procedure is restricted in terms to public nuisances in fact. Therefore, a constructive public nuisance can be no ground for a suit under that section, but the Advocate General in India, like the Attorney-General in England, has special power to take proceedings in respect of the latter class of nuisances. In all such cases his activity ought to be applied (a) either against the offending local authority; (b) or where powers

conferred upon the local authority are inadequate for enforcing compliance with the provisions of the Act, to supplement those provisions by his special remedies.

In India, as in England, no mandatory injunction would ever be asked for, much less granted, against a private individual for a mere nuisance in law, except where it has been created and persisted in in defiance of local authority and such authority has not sufficient power to enforce compliance with the law.

Statutory remedies—General principles governing such remedies.—Where persons are laying out a new street in such a manner as not to comply with the requirements of bye-laws made by a local authority under Public Health Act, which prescribes a penalty for infringement recoverable by summary proceedings before justices, the High Court of Justice has jurisdiction to enforce the bye-laws by injunction in an action brought by the Attorney-General at the relation of the local authority and by local authority.

It was urged in this case that the action would not lie and that the only remedies open to the plaintiffs were those prescribed in S. 158 of Public Health Act, 1875, and the councils' bye-laws. It was further urged in defence that the Act has created a new offence for which a certain penalty has been imposed and that there is no remedy by way of injunction. The Act itself has imposed no penalty, but has enabled the local authority to impose a penalty by bye-laws for the purpose. The statute has enjoined something, has itself imposed no penalty but has provided machinery by the use of which penalty may be imposed. That machinery has been employed.

As regards the remedies open to a party complaining of a breach of statutory duty certain general principles have been laid down in *Wolverhampton New Water Works Co., v. Hawkesford* (1859) 6 C. B. (N.S.) 336; as follows: There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law and that liability is affirmed by a statute which gives a special and peculiar form of remedy different from the remedy which existed at common law; there unless the statute contains words which expressly or by necessary implication exclude the common law remedy, the party suing has election to pursue either that or the statutory remedy. The second class of cases is where the statute gives the right to sue merely but provides no particular form of remedy. There the party can only proceed by action at common law. There is a third class, *viz.*, where a liability not existing at common

law is created by a statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not open to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to. There is, however, one exception to the general rule. There may co-exist a remedy by injunction to protect a right. This is an ancillary remedy in equity by injunction to protect a right. That is a mode of preventing that being done, which, if done, would be an offence. Whenever an act is illegal and is threatened, the court will interfere and prevent the act being done. In this case it was urged that plaintiffs' claim is not based on any right of property but only on the fact that what has been done is an interference with public rights in respect of a highway. The Attorney-General suing in respect of invasion of public rights has as much right in respect of invasion of public rights to invoke the aid of the court as a private owner suing in respect of his rights.

If there were no remedy except the statutory remedy, a public authority might by circumstances be rendered impotent although it had made bye-laws. *Att.-Gen. v. Ashbourne Recreation Grounds Co.*, (1903) 1 Ch. 101.

No suit for injunction to restrain the commission of acts in breach of bye-laws or Public Health Acts, lies in the absence of Attorney-General. *Devonport Corporation v. Tozer* (1903) 1 Ch. 759. See also *Attorney-General v. Wimbledon House Estate Co., Ltd.* (1904) 2 Ch. 34.

Note.—In the Punjab the statutory remedy is exclusive.

Infringement of building regulations.—Under building regulations one rule required that no building is permitted to be erected within two feet of a public road, lane or drain. Under another rule the distance between the perpendicular from the eaves of a house to the nearest boundary of the building on which such house is about to be erected must be three feet or such place must be kept free from all obstructions. In a case an accused was convicted for infringement of the above regulations. The evidence of the prosecution showed that the accused had only laid the foundation a few feet below the ground level, the brick-work of which had not even reached the plinth level, and there was no evidence to show what kind of building the accused was going to construct and whether the main building when completed would contravene the clauses of the rules for infringing which he had been convicted, nor had the committee taken steps to enforce the submission of the plan: *Held* that the conviction could not be maintained because in fact there was

no building in existence and it was not known whether and where the building would be erected. 52 I. C. 386.

Clause (3).—It would be noticed that under S. 240 the local Government is empowered to frame rules under Ss. 189 and 190 where the committee fails to frame them. The order of sanction therefore, can be made subject to modification in accordance with the bye-laws framed by committees or in accordance with rules framed by local Government under S. 240 (3) (z).

Period within which sanction to be communicated.—Where a building is sought to be erected or re-erected on a site or on a portion thereof for which sanction has already been refused within the previous twelve months, the period is 120 days.

Proviso to clause (4).—This is a unique provision not to be found in any other provincial Municipal Acts. In order to enable the applicant to wait for fourteen days before availing of the sanction, he must be informed that the resolution has not been carried by votes of $\frac{2}{3}$ of the members present. The object of the provision appears to be to enable the minority to secure either modification of the sanction as contemplated under S. 193-A or to enable them to move the Deputy Commissioner or Commissioner to take action under S. 232.

Clause (1).—The clause enjoins the committee to refuse sanction in such cases, but if the committee in any such case sanctions a building, such sanction must be deemed to be invalid and action under S. 195 will be necessary. Though S. 195 enjoins the committees to require demolition of buildings contravening the scheme sanctioned under S. 192 there is no such duty imposed in cases of contravention of bye-laws under S. 190. This appears to be anomalous especially when under clause (1) the committee is bound to refuse sanction.

Power of committee to direct modification of a sanctioned plan of a building before its completion.

193-A. If at any time before the completion of a building of which the erection has been sanctioned under Section 193 the committee finds that any modification of the sanctioned plan is necessary, the committee may, subject to compensation for any loss to which the owner may be put, direct that the building be modified accordingly.

Notes.

This section has been introduced by S. 77 of the Punjab Amendment Act, III of 1933. No corresponding provision has been discovered in any other provincial or city Municipal Acts. This enables the committees to rectify their negligence in not fully considering the implications of the scheme

of a proposed building. In the Punjab the committees have the longest period for consideration of the plans and there is therefore the less excuse for them to pass orders which should require modification afterwards. However, they would be well advised to take action as early as possible, otherwise the compensation to be paid may become prohibitive.

194. Every sanction for the erection or re-erection of any building which shall be given or be deemed to have been given, by a committee, [or executive officer] shall remain in force for one year only from the date of such sanction, or for such longer period as the committee may have allowed when conveying sanction under S. 189. Should the erection or re-erection of the building not have been commenced within one year and completed within two years or such longer period as may have been allowed by the committee the sanction shall be deemed to have lapsed; but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of the Act.

Lapse of sanction after one year from the date of such sanction.

Notes.

The section corresponds to clause (6) of S. 92 of the old Act with considerable modification.

Analogous Law:—

S. 239, Bengal District Municipal Act, 1884.	S. 183, Cantonment Act, II of 1924.
S. 325, Bengal Municipal Act, XV of 1932.	S. 102, Central Provinces Municipal Act, II of 1922.
S. 189, Behar and Orissa Municipal Act, 1922.	Ss. 242 & 253, Madras City Municipal Act, 1919.
S. 123 (6), Bombay Municipal Boroughs Act, 1925.	Ss. 204 & 213, Madras District Municipal Act, V of 1920.
S. 96 (4) (b), Bombay District Municipal Act, III of 1901.	S. 153 (b), Rangoon City Municipal Act, 1922.
Ss. 345 & 347, Bombay City Municipal Act, III of 1888.	S. 181, U. P. Municipalities Act, 1916.

Recent changes.—This section substituted by S. 78 of the Punjab Amendment Act, III of 1933, has added the words in italics. The building must now be commenced within year of sanction and completed within two years from the date of sanction. The committees have been empowered to allow longer period for completion when sanctioning plans and in such cases the building must be completed within the period allowed. The building must be commenced within one year even in cases where longer period is allowed for completion.

Executive Officers Act.—In municipalities to which the Act applies the words in brackets should be deemed to have been added.

Extension of period.—In some municipalities if the sanction is not availed of within the year, the intending builder returns the plan endorsed with the previous sanction and applies for the extension of the sanction. The committee usually passes a resolution extending the period of sanction for another year. This practice is not legal. When the building sanctioned is not commenced within the period prescribed by the section, the owner should put in a fresh application according to the procedure laid down under bye-laws framed under S. 189 (3) and such application should be considered on its own merits having regard to the circumstances existing at the time when the fresh application is made.

Completion of building.—The section does now make it obligatory that a building for which sanction has been granted or which has been commenced within the period fixed, must be completed within two years or within the time allowed at the time of sanction. This time cannot be less than two years. The person obtaining the sanction is not at liberty to commence and finish each separate part of the building as sanctioned, thereafter convenient to him, provided he has commenced some part of the building operations within the period of one year from the date of the sanction. If some part has been commenced within one year the rest must be completed within two years or within the period allowed. P. R. 61 of 1905 Cr. is no longer good law. In case a building is not completed within two years or within the period allowed, fresh sanction to complete the building must be obtained.

A building constructed after the lapse of sanction is a building without sanction. 40 I. C. 307.

A time limit fixed by order of sanction within which the applicant is to commence his building was held *ultra vires*. 51 I. C. 262.

Sanction under Act XIII of 1884.—There was no corresponding provision under Act XIII of 1884. Any sanction granted at the time when that Act was in force cannot be availed of after the commencement of Act XX of 1891, because under S. 2 of that Act the old sanction must be treated as if it had been granted under that Act, and could be availed of only within one year of the coming into force of that Act. P. R. 9 of 1905.

Sanction granted before the coming into force of the present amendment.—In cases of buildings commenced but not completed under sanction granted before the section came into force it is doubtful if the provision as to completion

can apply to such buildings. Such sanction carried with it the right to complete the buildings at any time after it had been commenced within the year of sanction. Is this a vested right which cannot be affected by change in the law? We do not think so.

- 195. Should a building be begun, erected or re-erected** ^{* Penalty for disobedience}
- (a) without sanction as required by Section 189 (1); or
 - (b) without notice as required by Section 189 (2); or
 - (c) when sanction has been refused,

the committee executive officer may by notice deliver to the owner within six months from the completion of the building require the building to be altered or demolished as it/he may deem necessary within the period specified in such notice; and should it be begun or erected—

- (d) in contravention of the terms of any sanction granted; or
- (e) when the sanction has lapsed; or
- (f) in contravention of any bye-law made under Section 190; or, in the case of a building of which the erection has been deemed to be sanctioned under Section 193 (4), if it contravenes any bye-law or any scheme sanctioned under Section 192:

the committee executive officer may by notice to be delivered to the owner within six months from the completion of the building require the building to be altered in such manner as it/he may deem necessary, within the period specified in such notice:

Provided that the committee may, instead of requiring the alteration or demolition of any such building, accept by way of compensation such sum as it may deem reasonable;

Provided also that the committee shall require a building to be demolished or altered so far as is necessary to avoid contravention of a building scheme drawn up under Section 192;

Provided further that if any notice is issued by the Executive Officer under this section on the ground that a building has been begun or has been erected in contravention of the terms of any sanction granted or in contravention of any bye-law made under section 190 the person to whom the notice is issued may, within fifteen days from the date of service of such notice, appeal to the committee, and, subject to the provisions of Sections 225, 232 and 236, the decision of the committee shall be final.

Notes.

This section was first amended by S. 7 of the Punjab Amendment Act, XV of 1926. S. 79 of Act III of 1933 now substitutes the present section for the old section as above amended.

Changes.—(1) The word “re-erected” has been added in the first clause in view of the decision reported in 1932 Lah. 597, though the defects have not been entirely removed.

(2) Committees have now been empowered to issue notice under this section within six months of the completion of the building.

(3) Buildings deemed to have been sanctioned under S. 193 or buildings contravening the schemes under S. 192 have been included under S. 195.

(4) The period of notice was thirty days but the present section does not fix any time. It has been left to the discretion of the committee.

(5) The committees have been enjoined to require demolition of buildings contravening the schemes under S. 192; such demolition can be required at any time after the completion.

(6) First proviso has been omitted and new one substituted.

Executive Officers Act.—In municipalities to which this Act applies the section should be deemed to have been amended by the substitution of the words “Executive Officer” for the word “Committee” and the word “he” for the word “it” before the provisos and the proviso in italics should be deemed to have been added.

Analogous Law:—

S. 238, Bengal District Municipal Act, 1884.

Ss. 321 & 330, Bengal Municipal Act, XV of 1932.

S. 192, Behar and Orissa Municipal Act, 1922.

S. 123 (7), Bombay Municipal Boroughs Act, 1925.

S. 96 (5), Bombay District Municipal Act, III of 1901.

Ss. 351 & 353, Bombay City Municipal Act, III of 1888.

S. 93 (2), Burma Municipal Act, III of 1898.

S. 363, Calcutta City Municipal Act, III of 1923.

Ss. 184 & 185, Cantonment Act, II of 1924.

S. 103, Central Provinces Municipal Act, II of 1922.

Ss. 244 & 256, Madras City Municipal Act, 1919.

Ss. 205, 216 & 317, Madras District Municipal Act, V of 1920.

S. 186, U. P. Municipalities Act, 1916.

English Law:—

S. 157, Public Health Act, 1875.

Application of the section.—The section is not intended to empower a municipality to require a man to pull down his house of old standing. The section applies to new buildings erected or re-erected in contravention of any provision of Ss. 189 to 194. The buildings erected in contravention of any agreement with the municipality are not subject to the provisions of the Act. Such an agreement can of course be enforced by regular proceedings in a civil court. If the municipality is not empowered to issue notice under this section with respect to such buildings it cannot be considered a notice under that section and the provisions of S. 225 with regard to appeal do not apply. 8 I. C. 569; 7 A. L. J. 1075.

Where a person added a structure to his existing building without obtaining permission the municipality can get the addition removed by serving a notice under S. 195. If the added structure is one which requires sanction under S. 193 the question whether the land underneath the structure is a part of the street or not does not arise at all. 55 I. C. 318.

Section 195 and Section 3, sub-clause (2). Foundations.—The definition of the word "building" is exhaustive in the Act and includes a wall. According to the definition before its amendment it would have included foundations. The laying of foundation is beginning of erection and hence action under S. 195 can be taken against erection of foundations. The erection of walls constitutes erection of a building. The erection of a wall of a building is a distinct stage from the stage of laying its foundations and house walls as compound walls are covered by the word building. If erection of foundations have not been objected to within time the erection of walls can be objected. Under the existing provisions action can be taken under this section at any time within six months after completion. Cf. 51 Bom. 818; 1927 Bom. 401.

A person without sanction and in defiance of Municipal Act and Rules erected a boundary wall 18 feet high though he was limited to a height of 10 feet. It was admitted that the walls were necessary for securing privacy of the premises: *Held*, that there was breach of S. 195 and the order of the demolition by the committee was valid and legal. Cf. 1929 Cal. 781.

Building be begun or erected.—These words show that it is not only the mere beginning of a building that is punishable but its continuance even to completion without the requisite permission or in defiance of legal orders. Therefore

where the walls of a building for which no sanction has been obtained have been built within six months prosecution in respect of it was within time, although the foundation was begun long before six months: 51 Bom. 818; 1927 Bom. 401. Under the Punjab Act, no such question can now arise as notice can be served within six months of the completion of the building.

Motive behind the action is irrelevant.—No doubt the High Court will interfere where it is clearly shown that a municipality or other public body has acted capriciously or unreasonably to the prejudice of the applicant in delaying the sanction, but a court of law is not entitled to go into questions of the exact motives with which the municipality or an officer of the municipality has acted; provided that the action taken is in accordance with law, the question of motive then becomes irrelevant. 51 Bom. 818; 1927 Bomb. 401.

Erected or re-erected.—The opening words of the section before its amendment in 1933 were: "Should a building be begun or erected" and therefore it was held that S. 195 was not in terms applicable to re-erection of buildings." 1932 Lah. 597. 138 I. C. 743.

Where S. 195 does not apply, the municipal committee is not entitled to demolish the structure under S. 220. 1932 Lah. 597.

The section creates no offence.—An erection in contravention of S. 195 is not in itself or by itself alone punishable. The disobedience of notice issued under this section becomes punishable under S. 219. 8 I. C. 983.

S. 219 will, however, be applicable to a building erected or re-erected against the terms of sanction. The deviation from the terms of sanction is an offence under S. 219 and in cases where the municipal committee is prepared to condone the deviations prosecution under S. 219 may be undertaken without going through the lengthy process of serving notice and calling upon the owner to alter the deviations.

In the U. P. Municipal Act there is a specific provision making it an offence to commence a building without sanction or to erect one against the terms of the sanction. Similar provision will enable the municipal committees to dispense with action under S. 195 where the building is only objectionable because of want of sanction.

Permission with regard to a portion of the building.—Where an owner having obtained permission to build on one portion of his land builds on another portion without having obtained fresh permission, such part of his building as is

outside the limits for which permission had been granted is built without notice. 21 Bom. 187.

Alteration or demolition—Jurisdiction of civil courts.—

The municipality can in their discretion order a building erected without sanction, etc., to be altered or demolished. A notice of demolition cannot be questioned on the ground that the building otherwise conforms to the orders of the municipality and can be altered so as to be made to conform to them. The committee may allow it to remain under the powers conferred on them under the last but one proviso, but the power of deciding this question rests with the municipality and a civil court should not interfere with the right exercise of this power. 21 Bom. 187.

Where plans have been rejected by the committee and the appeal to the Commissioner has been rejected, the owner of the proposed building has no remedy in a civil court unless he proves that the action of the committee is illegal or *mala fide*. This remedy in the civil courts is only possible where application under S. 45 of the Specific Relief Act cannot lie.

It would seem, however, where S. 45 is not applicable, the only relief which the courts can grant is to set aside the order of refusal as *mala fide* and leave the committee to pass orders according to law. 40 Cal. 836; 22 I. C. 388.

In pursuance of bye-laws under S. 190 an order issued by the municipality to a house-owner to leave an open space between the external wall of his house and the drain adjoining the road is not illegal.

A person aggrieved by an order under S. 195 must exhaust the statutory remedy provided in S. 225 before going to the civil courts for redress.

Where bye-laws are framed in the interests of public health they should not be construed in too strict and too limited a sense.

Where the sanction was given subject to the leaving of a space free of any structure between the external wall of his house and the drain adjoining the road and where the applicant, contrary to the said conditions, built a platform on the said open space, along with the re-erection of the house: *Held*, that the erection of platform was a material alteration and enlargement of building and thus was an erection requiring sanction. 37 I. C. 854.

The plaintiff's application for leave to build a two-storied house was sanctioned by the municipal committee, subject to the condition that he must leave vacant seven feet

of his land towards the west. It appeared that there was already an open space about five feet four inches in width in the west and the condition meant that he should not build within two feet of this open space. Plaintiff having built his house in contravention of this condition the municipal committee served him with a notice under S. 195 of the Act calling upon him to demolish the upper storey of his building. Plaintiff then brought a suit for injunction restraining the committee from interfering with the upper storey of his house:

(1) *Held*, that *prima facie* there was nothing illegal, wanton, capricious or oppressive in a condition such as this which was aimed at restraining the building of erections consisting of more than one storey alongside a narrow open space, but was on the contrary eminently reasonable and conducive to sanitation, free circulation of air and ventilation within the meaning and for purposes of S. 189 (3) of the Act read with S. 193 thereof;

(2) That the court was not concerned with the fact that compliance with notice would entail heavy loss upon plaintiff who having acted defiantly and with his eyes open must bear the loss.

(3) The question whether the committee in imposing the condition acted in good faith or *mala fide*, was one of fact and not a question of law. 75 P. R. 1916; 35 I. C. 377.

A plaintiff cannot be permitted to plead that a building as constructed will be more advantageous to the public than one sanctioned by the committee. 29 I. C. 766.

Demolition and jurisdiction of Courts.—If the notice is not complied with the committee may prosecute the offender under S. 219 and may continue this prosecution till the offending building is demolished. The committee may also, after the notice under S. 195 is not complied with, issue a notice under S. 220 and may thereafter itself proceed to demolish the building if notice under S. 220 is not complied with. The discretion of taking action or otherwise to remove a building or construction is vested in the municipality which alone can determine whether or not the removal of the building erected contrary to the provisions of the Act, is or is not a measure likely to promote the public convenience. If the municipality adopt the proper procedure, no court can review its decision on the ground that in the opinion of the court the removal of the building is not likely to promote public convenience. The legislature has confided to the municipality, and the municipality alone, the duty of deciding

what measures within its legal powers are for the public convenience and its discretion is not subject to control by the court: 22 Bom. 230. It is not the practice of the court to interfere with the corporate bodies, "unless they are manifestly abusing their powers." Where a suit was brought for damages against a municipality for the wrongful demolition of a wall which had been built without its permission, the court *held* that the municipality was justified in ordering the wall to be demolished and that the suit would not lie. 19 Bom. 27.

When the building contravenes any terms of sanction or contravenes any bye-laws then so much of the building as contravenes the terms or contravenes the bye-laws may be pulled down and the committee is not liable for damages in respect of any inappreciable excess in demolition and the building may be pulled down in any way so long as there is no unnecessary damage. *Cf. Jagger v. Doncaster R. S. A.*, (1890) 54 J. P. 438.

Without notice.—On the 18th August 1890 plaintiffs sent a notice to the Town Municipality of Umreth intimating their intention to erect a building on their land, and giving a rough sketch plan of the land intended to be built upon. In this notice plaintiffs did not expressly state their intention to build the wall in dispute. On the 28th August 1890 the municipality wrote to the plaintiffs requiring them to furnish a plan showing the design of the proposed building with its measurements. On the 30th September 1890 the plaintiffs without furnishing the plan as required, built a wall on their land. Thereupon the municipality gave a notice to the plaintiffs requiring them to pull it down, as it had been built without their permission. The plaintiffs having failed to comply with the notice the wall was demolished. Thereupon the plaintiffs sued the municipality to recover damages for the wrongful demolition of the wall: *Held* that the plaintiffs had contravened the provisions of S. 33, Act VI of 1873 (=S. 189 of the Punjab Act) inasmuch as they had built the wall without giving any notice or without affording the information required by the municipality. 19 Bom. 27.

In contravention of the terms of the sanction.—This will cover the case of absolute sanction as well as sanction subject to modifications. When plans are sanctioned absolutely the sanction means that the applicant is entitled to erect the building according to the plans. Any deviation from the plan will be a contravention of the terms of the sanction. The deviation must be material such as would have required previous sanction from the committee.

The raising of the plinth and the alterations made by the accused in the size, position or number of the doors or windows cannot be treated as material alterations in the original plan so as to affect the municipal board. They cannot be treated as an infringement of the sanction within the meaning of S. 195. Cf. 1923 Oudh 35; 67 I. C. 328; 23 Cr. L. J. 476.

Note.—The alteration will be material if the security of the building is affected by larger number of doors and windows. If the doors open on to the street this will also amount to material alteration under the Punjab Municipal Act.

Deviations from sanctioned plan.—Every departure does not justify action under S. 195.

It is a recognised presumption that the legislature does not intend to make any alteration in the law beyond what it explicitly declares.

It is a not every departure from the plan submitted that justifies action on the part of the municipality. The departure must involve also disobedience to legal order, or the infringement of a bye-law or of some provisions of the Act.

Under S. 96 of the Bombay Act, III of 1901, as it stands, no order as to the manner in which the doors and windows are to be opened can be legally issued.

Ss. 113 and 122 of that Act corresponding to Ss. 172 and 175 of the Punjab Act have no application to a case where it is merely apprehended that there may be an obstruction. 20 I. C. 572.

When permission is given to build according to plan, it is clear that it must be understood that a condition of the permission is that the building should be according to the plan. A man building against the plan can be prosecuted under S. 219 without action under S. 195. Cf. 24 All. 309; 1902 A. W. N. 70.

Notice under S. 195 to demolish a building for which qualified sanction given.—The cantonment authority gave A a qualified sanction to proceed with the construction of his building at his own risk that the site on which the construction was being built was claimed by the Government, but there was no "municipal objection." As soon as A proceeded to build, the cantonment authority served him with a notice "to demolish the unauthorized construction." A having failed to comply with this notice, he was prosecuted under S. 167* read with S. 268†:

* Corresponds to S. 172 of the Punjab Municipal Act.
Corresponds to S. 219 of the Punjab Municipal Act.

Held, that there was no unauthorized construction because A had sanction from the board to build the room, that it was preposterous to suggest that when A had had the sanction of the board in writing under S. 181 *, he did not have the permission in writing of the cantonment authority, and that the question between the parties was a purely civil one and as a matter of fact A had not exceeded the authority given him by the board in sanctioning his application for building. 1933 All. 486.

This section does not give authority to the committee to direct the demolition of the whole or any part of a building which was in existence before the sanction was given, but only a building erected in contravention of the plan submitted to and sanctioned by the committee. *Cf.* 33 Cal. 646.

Implied sanction -- Notice under S. 194 or 195-A and failure to appeal.— It would be most unfair to the public and completely defeat the object of the sub-section (3), S. 193, if when the board by its own laches has given the constructive sanction provided for in that sub-section to an applicant for permission to build, it should then be able to retrieve its position and withhold sanction by issuing a notice under S. 195 unwarranted by the Act. Once the sanction of the board is deemed to have been given to the proposed construction under sub-section (3), S. 193, the board has no right to issue a notice under S. 195 and the disobedience of such notice is not an offence under S. 219. The fact that the applicant did not appeal against the notice under the provisions of S. 225 is quite immaterial. The wording of S. 225 does not preclude a person setting up the plea of the illegality of the notice as a defence when he is criminally prosecuted under S. 219. *Cf.* 1932 Oudh. 306; 140 I. C. 185.

Building a latrine at a place not sanctioned – Construction under misapprehension of the order.— The owner of a particular compound applied to the municipality requesting permission to construct a latrine in the north-eastern corner of his compound. The chairman of the municipality under the advice of the health officer granted permission, but only to erect the latrine on a spot in the north-western corner. The owner, however, thinking that the word north-western was written through mistake requested the chairman to correct the mistake and to send back the required permission. No reply having been received to this, the owner again wrote to the municipality asking for the permission and informing that he would commence construction without permission if

* S. 193 of the Punjab Municipal Act.

permission was not sent at the end of the next month; and began construction accordingly:

Held, that so far as permission was needed to the construction at the place where it had been constructed, it was built without permission. 1931 Mad 228; 129 I. C. 635.

Clause (f).—All persons are expected to comply with bye-laws framed under S. 190. Though the sanction under S. 193 may not specifically refer to these bye-laws still if the building is constructed against the bye-laws under S. 190, the committee will be justified in requiring alteration of the offending building so as to make it conform to them.

Notice.—The notice must state facts correctly and give sound reasons. A notice which merely refers by number to the bye-laws infringed was held to be sufficient for the purpose of requiring the work to be removed. The powers given by the Municipal Acts to municipal committees are an interference for the public good with the ordinary rights and privileges of the public; and, therefore, the law should be very strictly construed against the municipal corporation. If a municipal corporation wishes to exercise these extraordinary powers, it must do so strictly in accordance with law and procedure; and if a municipal corporation directs a person to remove a building on the ground that it has been recently built without permission, that person is not bound to remove the building which it has been proved was not built recently, merely on the ground that it is in a public street; and would be quite justified in asking a court to decide whether the notice actually served upon him stated the facts correctly and gave sound reasons for the removal of the building concerned: P. R. 56 of 1911. There is nothing to prevent a municipal corporation from serving a fresh notice in reply to the objections raised by an owner.

Where on the receipt of a notice under this section the accused entered into correspondence with the committee, a prosecution without fresh notice will be valid. Under S. 225 there is a right of appeal against notice issued under S. 195 but the Act nowhere confers on the aggrieved person a right to open correspondence with the committee, and pending the course of that correspondence to debar the committee from taking legal proceedings against the person. 12 P. R. 1899 Cr.

Building without depositing plans.—B was charged with erecting new buildings not in accordance with the deposited plans, in that certain tub-closets were not in the position shown on the plans, having been erected from fifteen to twenty-seven feet distant from the main building instead of two.

and-a-half feet. It was *held* that the tub-closets were privies, and that the defendant was rightly convicted on a charge of executing works without having previously deposited plans: *Burton v. Acton*, (1887) 51 J. P. 566. Where a bye-law required that every person intending to erect a building should send in complete plans and sections of every floor, showing the position, form, and dimensions of every part of the intended building, but there was no bye-law against building contrary to deposited plans, and the respondent sent in plans which were approved, but afterwards, without sending in fresh plans, made substantial alterations by diminishing the height of the floors of the building, it was *held* that he ought to be convicted of a breach of the bye-law requiring the deposit of plans *James v. Masters*, (1893) 1 Q. B. 355; 57 J. P. 167.

Within the period specified in the notice.—The period prescribed for this notice was thirty days, the present amended section prescribes no period. Under S. 214 of the Act the committee must fix a reasonable time for compliance which may be more or less according to the requirements of the notice.

Within six months. Originally the requirement was within reasonable time. There was no indication from what time the period was to be counted. Now the period will commence from the completion of the building.

In the section both terms “begun,” and “erected or re-erected” are used. So the notice may issue within six months of the commencement or the completion of the erection of the building, or within six months of the completion of the deviation or the contravention contemplated by clauses (d), (e) or (f).

Notice to be served within six months from the completion of the building.—Building consists of different parts and is erected at different stages. If a particular portion was completed within six months of the notice it will be legal and the portion so completed can be required to be demolished. 51 Bom. 818; 1927 Bom. 401.

Before the amendment of S. 195 by Act XV of 1926 a notice issued within six months of the date of knowledge of the committee as to the unauthorized structure was held to be within time. A notice issued to the owner who applied for sanction was also held to be good though the house belonged to more than one owner. 1930 Lah. 478, 127 I. C. 221.

Appeal.—S. 195 is appealable and a person served with a notice cannot question it in a civil court before exhaust-

ing his remedy provided by the Act under S. 225. Cf. 37 I. C. 854.

However, if the action of the committee is *ultra vires* or *mala fide*, there is nothing in S. 225 to debar a person from resorting to civil court without appealing.

Composition.—This cannot be forced on the committees and the courts have no power to compel committees to accept some penalty instead of demolition of building. Similarly the committees cannot force such composition on unwilling people, and cannot ask people to pay so much as penalty for erecting a building against sanction.

The proposal for composition should emanate from the party guilty of the offence and if the committee finds that the building can be allowed to stand and need not be demolished the committee may in that case accept the proposal. There is no limit to the amount and it rests entirely within the discretion of the authority what amount will satisfy it. The proper procedure for the committee is to issue notice for demolition and in cases where the demolition is not to be insisted upon, the builder may be informed that the committee will be prepared to cancel the notice if he is willing to offer so much by way of composition. This will not delay matters and the committee will remain within time for demolition, if the builder does not make any offer for compromise. The amount will depend on the circumstances of each case. It should not be so low as to induce people to set at naught the authority of the committee nor should it be so excessive as to lead the builder to prefer demolition to compromise. If the building erected or deviations made are not otherwise objectionable, a prosecution straightway may be undertaken under S. 219 to vindicate the authority of the committee. The municipal committee has a discretion to 'accept such sum as it may deem reasonable.' This discretion should not be fettered by self-imposed rules. The rule of Lahore Municipal Committee to compound only on payment of a certain percentage of the cost of the building and the land underneath constitutes a fetter on their discretion and is not legal, though in practice the rule is seldom observed.

Person liable to comply with the notice.—Sometimes difficulty is experienced by committees in enforcing the provision of this section. By the time notice is served it is found that the offending building has changed hands. Sometimes the notice is served on the owner who after service transfers the property and it is found difficult to serve the new owner with fresh notice in time. The section lays down that the committee is to require owner of the building to

demolish or alter and such a notice can only be effectively complied with by the person who is the owner at the time of service.

So far as breach of bye-laws under S. 189 (3) or 190 is concerned the actual builder can be prosecuted for the breach. The owner if served before transfer may also be prosecuted under S. 219 for failure to comply with the notice. The transferee cannot be prosecuted unless he has received notice under S. 195.

Acquittal.—A person who has once been tried for building a house without sanction and acquitted cannot be re-tried for the same offence simply on the ground that the house continues to stand and thus constitutes a nuisance. 38 I. C. 436.

195-A. (1) Where a building is begun as described in Section 195 but not completed, the committee may within six months by notice require the building operations to be discontinued from the date of the service of such notice.

Power of
committee to
stop building
operations

(2) Any person failing to comply with the terms of such notice shall be punishable with a fine which may extend to one thousand rupees and when the non-compliance is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the non-compliance continues.

Notes.

This section has been introduced by the Amendment Act, II of 1923.

Where a building is begun as described in S. 195 but not completed, the committee may within six months by notice require the building operations to be discontinued from the date of the service of such notice.

When a building is in course of construction, the building operations can be stopped under this section. When a building is begun action can also be taken under S. 195 but if action is taken under S. 195 the notice can only demand demolition. If, however, at the time of issue of notice the building is completed, the notice should be under S. 195.

Analogous Law:—

S. 333, Bengal Municipal Act, XV of 1932.	S. 362, Madras City Municipal Act, 1919.
S. 193, Behar and Orissa Municipal Act, 1922.	S. 216, Madras District Municipal Act, V of 1920.
S. 365, Calcutta City Municipal Act, III of 1923.	S. 155, Rangoon City Municipal Act, 1922.
S. 185, Cantonment Act, II of 1924.	S. 186, U. P. Municipalities Act, 1916.

Executive Officers Act.—The power conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under this section can be delegated under S. 33 (a) & (d).

Within six months.—The time will begin from commencement.

Compensation.

196. (1) No compensation shall be claimable by an owner for any damage which he may sustain in consequence of the prohibition of the erection of any building.

(2) The committee shall make reasonable compensation to the owner for any damage or loss which he may sustain in consequence of the prohibition of the re-erection of any building or part of a building except in so far as the prohibition is necessary under any bye-law:

Provided that the committee shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back, unless for a period of three years or more immediately preceding such notice the building has by reason of its being in a ruinous or dangerous condition become unfit for human habitation or unless an order of prohibition issued under Section 116 has been and still is in force in respect of such building.

Notes.

This corresponds to proviso to S. 92 (1) of the old Act. Clause 2 and the proviso have been substituted by S. 80 of the Punjab Amendment Act, III of 1933.

Changes.—(1) In clause 2 the word “reasonable” has been substituted for “full.”

(2) The words in italics have been added in the clause. Compensation can also be claimed when a part of the building is prohibited.

(3) No compensation is payable where prohibition is necessary under any bye-law.

(4) Reasons for refusal to pay any compensation have been widened.

Analogous Law:—

S. 237, Bengal District Municipal Act, III of 1884.
S. 104, Central Provinces Act, II of 1922.
S. 190, Bihar and Orissa Act,

VII of 1922.
S. 183, U. P. Municipalities Act, II of 1916.
S. 182, Cantonment Act, II of 1924.

Damage he may sustain.— See 14 Bom. 292 noted under S. 174.

Compensation how claimable.— Remedy open to owner is by application under S. 224 of the Act and not by suit.

197. The committee may, and shall if so required by the local Government, by bye-law—

- (a) prohibit the manufacture, sale, or preparation or exposure for sale, of any specified articles of food or drink, in any place or premises not licensed by the committee;
- (b) regulate the hours and manner of transport within the municipality of any specified articles of food or drink, and prescribe the route by which such articles shall be carried;
- (c) prohibit the sale of milk, butter, ghi, curd, meat, game, fish and poultry by persons not licensed by the committee;
- (d) prohibit the import into the municipality for sale, of milk, cream, butter, ghi, curd, meat, game, fish and poultry by persons not licensed by the committee;
- (e) make regulations for the grant and withdrawal of licenses and the levying of fees therefor under this section:

Powers for committee to regulate the manufacture, preparation and sale of food and drink.

Provided that no person shall be punishable for breach of any bye-law made under clause (a) of this section by reason of the continuance of such manufacture, preparation or exposure for sale, or sale upon any premises which are, at the time of the making of such bye-law, used for such purpose until he has received from the committee six months' notice in writing to discontinue such manufacture, preparation or exposure for such sale, or such sale in such premises;

Provided further that nothing herein contained shall affect the operation of Section 43 of the Punjab Laws Act, 1872, and the rules made thereunder.

Notes.

S. 137 of the old Act.

Considerable amendments were introduced by Amendment Act, II of 1923, while the present Amendment Act of 1933 made further amendments. The additions made by Act, III of 1933, are shown by the words in italics. The punctuation in sub-clause (d) has been corrected according to the recent proposed amendment.

Analogous Law:—

- S. 263, Bengal District Municipal Act, 1884.
 Ss. 418, 420 & 434, Bengal Municipal Act, XV of 1932
 Ss. 281 & 291, Behar and Orissa Municipal Act, 1922.
 Ss. 61 (1) (i) (ii), (f) & (g) 178, Bombay Municipal Boroughs Act, 1925.
 S 48 (b) (ii) & (d), Bombay District Municipal Act, III of 1901.
 Ss. 410, (4), 412-A, 461 (g) to (j), Bombay City Municipal Act, III of 1888.
 S. 102, Burma Municipal Act, III of 1898.
 Ss. 390, 395, 405, 428 & 478 (53), Calcutta City Municipal Act, III of 1923.
 S 180, Central Provinces Municipal Act, II of 1922.
 Ss. 299, 309, 349 (11) (17) (21), Madras City Municipal Act, 1919.
 Ss. 258, 269 & 306 (15), (21), Madras District Municipal Act, V of 1920.
 S. 126, 135 (xxiii) (1), Rangoon City Municipal Act, 1922.
 Ss. 241, 298—List 1—F (a) and List 1—I—(b), U P. Municipalities Act, 1916.

Sale at a specified place—Clause (a) of S. 197 as amended by the Municipal Amendment Acts of 1923 and 1933, does not authorize a municipal committee to frame a bye-law prohibiting the sale by auction of fresh fruits and vegetables at any place other than a particular place. Therefore where a municipality had framed a bye-law that the sale should take place at a particular place under S. 197(d) of the unamended Act which authorized the framing of such a bye-law but which sub-section had been repealed by Act of 1923: *Held* that no person can be prosecuted for the breach of the bye-law under the old S. 197 (d) when the alleged offence was committed after passing of the Municipal Amendment Acts of 1923 and 1933. 1928 Lah. 540; 112 I. C. 360; 1929 Lah. 607; 11 Lah. 24.

Sale and exposure for sale.—Ownership alone will not be sufficient to render a person liable for breach when the article is not exposed for sale. Nor will the possession of any article render the owner liable if it is not intended for sale.

The appellant, a farmer, sent to a London salesman meat, which to his knowledge was unsound for the purpose of its being sold as human food. The salesman did not expose the meat for sale, but called the attention of an inspector to it. The inspector seized the meat and obtained a justice's order for its destruction. The appellant having been convicted of being the owner of unsound meat "unlawfully deposited for the purpose of sale and intended for the food of man," it was *held* that the conviction must be quashed, for there had been no exposure for sale, and the meat had not been found in the possession or on the premises of the appellant. *Barlow v. Terrett*, (1891) 2 Q. B. 107; 55 J. P. 632.

In *Ollett v. Jordan*, (1918) 2 K. B. 41; 82 J. P. 221, a small consignment of fish had been sent from Hull under an agreement to sell. When unpacked the fish was found to be unsound and the purchaser, exercising his right to accept or reject, rejected them. It was held that there was an "exposure for sale" by the consignor within the meaning of S. 117, Public Health Act, 1875, corresponding to S. 206 of Municipal Act.

A person having in his possession unsound meat intended for sale for the food of man is liable to be convicted under the above section, notwithstanding that he has not exposed the meat for sale: *Mallinson v. Carr*, (1891) 1 Q. B. 48; 55 J. P. 270; followed in *Cork R. D. C. v. Walsh*, (1908) 2 I. R. 234. But a person cannot be convicted for having in his possession unsound meat intended for food for himself, his servants, and his work-people, and not for sale. *Rendell v. Hemingway*, (1898) 14 T. L. R. 456.

Bye-law regulating places.—Where the Act does not expressly prohibit certain matters without license and where a board attempted to make a bye-law for the establishment and for regulation and inspection of places for the sale of specified articles of food or drink in the absence of specific provision, the board has not the power to make a bye-law for the levying of license on specified articles of food or drink. They can provide for the establishment, for the regulation and for the inspection of places for the manufacture or sale of specified articles of food, but they cannot under a dubious expression "regulate places" charge a fee for license. A statutory power conferred upon a municipal council to make bye-laws for regulating and governing a trade does not, in the absence of an express power of prohibition, authorise the making it unlawful to carry on a lawful trade in a lawful manner. Hence a bye-law prohibiting sale of milk, cream, etc., without license is *ultra vires*. Cf. 1933 All. 593.

Grant of licenses.—See Notes under Ss. 121, 167 & 188. It is entirely within the discretion of the committee to grant or refuse a license and courts have no jurisdiction to control such power. 17 Cal. 329; 20 Cal. 654.

Power to grant licenses on condition.—When the law requires that the municipality shall grant a license applied for subject to such regulations as a committee may make the committee is bound to grant a license and if when it receives the application in due course it confines itself to saying that it will not grant the license it tantamounts to passing no orders on the application. Refusal to function under the Act is not passing an order under the Act. The order must be *intra vires* and an order *ultra vires* is no order at all, 1928 Mad. 164; 106 I. C. 718.

Import of meat.—Where a person who was a butcher by trade and had no license, actually imported meat in large quantities far more than could be required for his personal use and had distributed it but where there was no evidence that he actually received any money, the presumption that he actually imported meat and sold it can be legitimately drawn. 1929 Sind 150, 115 I. C. 307.

Committee cannot withhold permit to sell for failure to carry out a requisition not issued under law; committee was *held* liable for damages for illegal withholding of permission to sell pork. 1924 Rang. 132; 77 I. C. 864.

Seller.—Weigh-man is not a seller and cannot be convicted for selling without license. 17 I. C. 541.

Exposed for sale.—In *Crane v. Lawrence*, (1890) 25 Q. B. D. 152; 54 J. P. 471, an inspector was served with a portion of margarine cut off a parcel of the substance which was lying on the counter concealed by a screen in such a manner as to be invisible to a customer in the shop. The portion so handed to the inspector was wrapped in the wrapper required by S. 6 of Margarine Act, 1887. The Divisional Court *held* that the parcel of margarine so concealed by the screen was not “exposed for sale” within the meaning of the section and, therefore needed no label.

In *Wheat v Brown*, (1892) 1 Q. B. 418; 56 J. P. 153; 61 L. J. M. C. 94; 66 L. T. 464; 40 W. R. 462; there was a notice in a shop window advertising “Danish butter.” An inspector went in and asked for some. On the counter there was a heap of paper parcels, each of which had the word “Margarine” printed on it. One of these was handed to the inspector, and was found to contain margarine. The shopkeeper was summoned for neglecting to attach to the heap the label required by the section but the Bench dismissed the summons, holding, on the authority of *Crane v. Lawrence*, that the margarine being wrapped in paper, and, therefore, invisible to the purchaser, was not “exposed for sale” within the meaning of the section. The Divisional Court reversed this decision on the ground that the justices had taken an erroneous view of *Crane v. Lawrence*. Wright, J., said: “I entirely agree with the decision in *Crane v. Lawrence*, which was, in effect, that there was no exposure for sale when margarine was stored in a back room or cellar. The decision is simply that margarine which cannot in any sense be seen by the purchaser is not exposed for sale. In this

case, the justices refused to convict the defendant upon the ground that the second part of S. 6 does not apply to the margarine which is wrapped up in paper. That, in my opinion, is a wrong view of the section. The expression 'exposed for sale' is a well-understood term, and cannot be limited so as to mean only 'exposed to view.' "

Proviso.—In order to render a person liable to punishment for breach of any bye-laws made under S. 197, clause (a), it is necessary that notice should have been served upon him as provided by the section. 38 All. 455; 34 I. C. 989.

197-A. No wild bird or animal in respect of which any close time has been notified by the local Government under Section 3 of the Wild Birds and Animals Protection Act, 1912, shall, whether dead or alive, be possessed or sold during such close time within any municipality; and no such bird or animal shall at any other time be sold within any municipality except under an annual license to be granted by the committee: provided that these prohibitions shall not extend to wild birds or animals possessed or sold as pets.

Prohibition of possession or sale of wild birds and animals.

Notes.

This is a new section introduced by Amendment Act, II of 1923.

Executive Officers Act.—The duty imposed upon the committee under this section shall not be performed by committees but may be performed by the executive officers in municipalities to which the Executive Officers Act has been extended.

198. In the municipalities of Simla, Dharmsala, Dalhousie, and Murree, the committee may further make bye-laws—

Additional power to make bye-laws in hill municipalities

(a) for regulating or prohibiting the cutting or destroying of trees or shrubs, or the making of excavations or removal of soil or quarrying, where such regulation or prohibition appears to the committee to be necessary for the maintenance of a water-supply, the preservation of the soil, the prevention of landslips or of the formation of ravines or torrents, or the protection of land against erosion or the deposit thereon of sand, gravel or stones;

(b) for fixing places where timber or wood of any description may be stacked, and for regulating the manner in which such timber or wood, as the case may be, may be stacked, where such regulation appears to the committee to be necessary for the prevention of fire or other danger or grave incon-

venience to the public or of landslips or other injurious disturbance of the surface of any land;

(c) for rendering licenses necessary within the municipality—

(i) for persons working as job porters for the conveyance of goods,

(ii) for animals or carriages let out on hire for a day or part thereof, and

(iii) for persons impelling or carrying carriages;

(d) for fixing the fees payable for such licenses as are referred to in this section, and the conditions on which such licenses are to be granted and may be revoked.

Notes.

S.144 of the old Act. Some of the provisions of the old section have been included in S.188 of the new Act.

Analogous Law:—

S. 350-A, Bengal District Municipal Act, III of 1884.

XV of 1932.

S. 499, Bengal Municipal Act,

S. 298—List II—H., U. P. Municipalities Act, II of 1916.

This section was amended by Act II of 1919, by omission of the word “such” in sub-clause (iii) of clause (c). The section deals with matters peculiar to hill stations and therefore the hill municipalities have been invested with these special powers. By the amendment effected by Act II of 1919, persons carrying private carriages will require to be licensed.

Making excavations.—The object of S. 198 is to empower the committees to forbid excavations in order to preserve soil or to prevent landslips, and it is not intended that a person should be prohibited from making an excavation or a hole or a cavity in his own estate for domestic purposes which cannot cause any landslip or danger to the public. Where, therefore, an alleged excavation is made on a private estate for making charcoal and the complainant does not produce any evidence to prove the nature and dimensions of the excavation nor is there any warrant for the assumption that the prevention of the excavation is necessary for any of the purposes mentioned in the section, the accused cannot be said to have done an act contrary to the provision of law. 1929 Lah. 845; 117 I. C. 801.

Penalty for
infringement
of bye-laws

199. (1) In making any bye-law under any section of this chapter, the committee may direct that a breach, or an abetment of a breach of it, shall be punishable with fine which may extend to fifty rupees, and, when the breach is a continuing breach with a further fine which may extend to

five rupees for every day after the first during which the breach continues.

(2) In lieu of or in addition to such fine, the magistrate may require the offender to remedy the mischief so far as is within his power.

Notes.

S. 145 of the old Act. The abetment of the breach has also been made punishable.

Analogous Law:—

- | | |
|---|--|
| S. 350 last clause, Bengal District Municipal Act, 1884. | Ss. 480 & 536, Calcutta City Municipal Act, III of 1923. |
| S. 503, Bengal Municipal Act, XV of 1932. | S. 178 (5), Central Provinces Municipal Act, II of 1922. |
| S. 356, Behar and Orissa Municipal Act, 1922. | S. 351, Madras City Municipal Act, 1919. |
| S. 61 (1) last clause, Bombay Municipal Boroughs Act, 1925. | S. 308, Madras District Municipal Act, V of 1920. |
| S. 48 (u), Bombay District Municipal Act, III of 1901. | S. 234, Rangoon City Municipal Act, 1922. |
| S. 462, Bombay City Municipal Act, III of 1888. | S. 299, U. P. Municipalities Act, 1916. |

English Law:—

- S. 183, Public Health Act, 1875.

Breach by more than one person.—S. 199 lays down that in framing bye-laws under the different sections of the Act the committee may direct that a breach of the bye-law shall be punishable with fine.

The Calcutta Corporation made certain bye-laws regulating theatres. One of the rules prohibited performances after 1 p. m. Under a section corresponding to S. 199 of this Act every person guilty of the breach was punishable with fine of Rs. 20. Three joint proprietors of a theatre were prosecuted and separately punished. The legality of the sentence was questioned on the ground that the offence being a single one each of the accused could not be separately punished.

As a general principle of criminal law all who participate in the commission of a crime are severally responsible as though the offence had been committed by each of them acting alone. Consequently although as joint actors in the commission of crime they may be jointly tried and convicted, each must be separately punished. Therefore for the breach of the bye-law each is liable to be punished with the maximum penalty regardless of the number of persons who may have been associated with him in the commission of the breach.

The bye-law in making the offender liable instead of the offence is not *ultra vires*. Indian Law does not make any distinction between the punishment of an offence and the punishment of an offender. 44 Cal. 1025 *over-ruling* 40 I. C. 322.

Abetment.—The Punjab Municipal Act is a local and special law and S. 40, I. P. C., applies to abetment of an offence which is thereby made punishable. 54 I. C. 781.

Abetment of a breach of bye-laws is not punishable under S. 109, I. P. C., as it is not an abetment of an offence within the meaning of that section unless the local law declares a breach of the rules made under its authority to be an offence. Local law does not necessarily include a rule made under that law. 1929 Rang 75; 23 P. R. 1894.

Theatres.—Power of legislature to delegate to municipalities to provide punishments as in S. 199 is not *ultra vires*. Bye-laws fixing hours of theatres are not *ultra vires*. 54 I. C. 781.

Fine for continuing breach.—*See* Notes to S. 219.

For notes on bye-laws in general *see* Notes under S. 3 (3).

What is a continuing breach.—Under S. 248 of Bengal Act, IV of 1876, a milkman, who had been convicted and fined under the section for keeping an animal without a license, cannot be again prosecuted for the continuance of the same offence before the date of the conviction. Nor can such a milkman be separately prosecuted for the offence for each day the offence is continued as a separate and distinct offence under the above section before conviction. 13 Cal. 108.

Where a milkman having been convicted for not having taken out before 1st December a half-yearly permit in accordance with bye-laws made under S. 412 of Bengal Act, II of 1888, by the Municipal Commissioners of Calcutta, was charged again with continuing the offence by failing, for the space of seven days subsequent to the said conviction to take out the permit for the same half-year, while still carrying on the business as a milkman: *Held* that the offence of not taking out a permit on or before 1st December was complete when that had passed and that as he had already been punished for this, he could not be again convicted for the same offence. 20 Cal. 605.

A person having been previously convicted under a bye-law for having built a party wall not of the thickness prescribed by the bye-law was sometimes afterwards again

summoned and convicted in respect of the same wall and adjudged to pay a fine of five shillings a day for seven days as for a continuing offence. The conviction was set aside on the ground that the offence was not a continuing one. The continuing offence was held to mean an offence which was from its nature susceptible of continuance and could not apply to a party wall when once finished. *Marshall v. Smith*, (1873) L. R. 8 C. P. 416.

Powers under the section.—Power to make bye-laws and power to provide penalties for breaches thereof does not carry with it the power to adjudicate or even to determine who shall adjudicate whether a person has broken the bye-law. Bye-laws giving such power are, therefore, *ultra vires*: 5 Bom. H. C. R. (C. C.) 10 and 8 Bom. H. C. R. (C. C.) 39. The municipality is not to be regarded as a judge of its own cause, and it is not necessary that the construction placed by the municipality on rules framed by the commissioners should be adopted by the court. 8 Bom. H. C. R. 213 (A. C. J.).

200. All bye-laws made under this Act shall be subject to previous publication.

Procedure
for making
bye-laws.

Notes.

There was no corresponding section in the old Act. Government circulars dealt with the procedure for publication.

Analogous Law:—

- S. 351, Bengal District Municipal Act, 1884.
- S. 505, Bengal Municipal Act, XV of 1932.
- S. 253, Behar and Orissa Municipal Act, 1922
- S. 61 (2), Bombay Municipal Boroughs Act, 1925.
- Ss. 46 (j) (a) & 48 (2), Bombay District Municipal Act, III of 1901.
- S. 467, Bombay City Municipal Act, III of 1888.

- S. 200, Burma Municipal Act, III of 1898.
- 481, Calcutta City Municipal Act, III of 1923.
- S. 353, Madras City Municipal Act, 1919.
- S. 305, Madras District Municipal Act, V of 1920.
- S. 232, Rangoon City Municipal Act, 1922.
- S. 301, U. P. Municipalities Act, 1916.

English Law:—

- S. 184, Public Health Act, 1875.

Previous publication.—Under S. 21 of the Punjab General Clauses Act, I of 1898, the following steps are necessary for previous publication:—

- (a) the municipalities should publish a draft of the proposed bye-laws for the information of persons likely to be affected thereby;

- (b) this publication shall be effected in such manner as the municipality deems sufficient or in such manner as the local Government prescribes;
- (c) with the draft under (a) a notice specifying the date on or after which the draft will be taken into consideration;
- (d) the consideration of the objection and suggestion to the draft bye-laws from any person;
- (e) publication in the Gazette of the bye-laws purporting to have been made in exercise of a power to make bye-laws after previous publication shall be conclusive proof that the bye-law has been duly made.

Valid publication.—Where certain draft rules under the U. P. Municipalities Act, 1900, were published in the local official Gazette and notice was given to the public that the rules would be taken into consideration by the local Government on or after a certain date and in pursuance of that notice the rules were again published in the Gazette:

Held that the publication of the rules was a valid publication. 14 I. C. 191.

Confirma-
tion of bye-
laws,

201. (1) No bye-law made under any section of this chapter shall come into force until it has been confirmed by the local Government and published for such time and in such manner as the local Government may prescribe in this behalf.

(2) The local Government may cancel its confirmation of any such bye-law, and thereupon the bye-law shall cease to have effect.

Notes.

S. 146 of the old Act.

Analogous Law:—

- S. 351, Bengal District Municipal Act, 1884.
- S. 506, Bengal Municipal Act, XV of 1932.
- S. 354, Behar and Orissa Municipal Act, 1922.
- Ss. 463 & 470, Bombay City Municipal Act, III of 1888.
- S. 143, Burma Municipal Act, III of 1898.
- Ss. 482 & 487, Calcutta City

- Municipal Act, III of 1923.
- S. 178 (3), Central Provinces Municipal Act, II of 1922.
- S. 352, Madras City Municipal Act, 1919
- S. 309, Madras District Municipal Act, V of 1920.
- S. 301, U. P. Municipalities Act, 1916.
- English Law:—*
- S. 184, Public Health Act, 1875.

A resolution or order of committee.—A resolution laying down a certain course of conduct cannot have the force of rule or bye-law binding on the public unless it is published and confirmed by local Government. 17 I. C. 713; 1928 Lah. 540.

Presumption as to procedure.—See Notes under S. 3 (3). Publication in the Government Gazette shall be conclusive proof that the bye-laws have been duly made. See S. 21 (5), General Clauses Act, I of 1898.

Effect of confirmation.—Confirmation by Government does not make the bye-laws valid. Courts have often declared bye-laws duly confirmed by local Government to be invalid or *ultra vires*: 1933 Nag. 68. See Notes under S. 3(3) and Notes under various sections dealing with bye-laws.

202. (1) A copy of all bye-laws made under this Act for any municipality shall be kept at the committee's office, and shall be open during office hours without charge to the inspection of any inhabitant.

Bye-laws to be available for purchase and inspection.

(2) Copies of all such bye-laws shall be kept at the committee's office for sale to the public at a price not exceeding one rupee.

Notes.

S. 190 of the old Act.

Analogous Law:—

- S. 351, Bengal District Municipal Act, 1884.
- S. 62, Bombay Municipal Boroughs Act, 1925.
- S. 49, Bombay District Municipal Act, III of 1901.
- S. 181, Central Provinces Municipal Act, II of 1922.

- S. 354, Madras City Municipal Act, 1919.
- S. 311, Madras District Municipal Act, V of 1920.
- S. 329, U.P. Municipalities Act, 1916.

English Law:—

- S. 185, Public Health Act, 1875.

Omission.—To keep printed copies of the bye-laws for sale does not affect their validity. Rat. Un. Cr. C. 615 (1892).

CHAPTER XI.

OF PROCEDURE.

Powers of entry and inspection.

203. (1) The committee or executive officer may authorize any person to enter, between sunrise and sunset, into any building or upon any land and to inspect any drain, privy, latrine, urinal, cesspool, cable, wire, pipes, sewer or channel

Inspection of drains, privies and cesspools.

therein or thereon, and to cause the ground to be opened where such person as aforesaid may think fit for the purpose of preventing or removing any nuisance arising from the drains, privies, latrines, urinal, cesspools, cables, wires, pipes, sewers or channels.

(2) If, on such inspection, it appears that the opening of the ground was necessary for the prevention or removal of a nuisance, the expenses thereby incurred shall be paid by the owner or occupier of the land or building; but if it be found that no nuisance exists or but for such opening would have arisen, the ground or portion of any building, drain or other work, if any, opened, injured or removed for the purpose of such inspection shall be filled in, reinstated and made good by the committee.

(3) No building other than a latrine, urinal or privy, shall be entered under this section until six hours' notice in writing has been given to the occupier of the building by the committee or by the person authorized by the committee to make the entry.

Notes.

S. 106 of the old Act.

Executive Officers Act—In municipalities to which that Act is extended the words in italics must be deemed to have been added after the word "committee."

Analogous Law:—

- S. 191, Bengal District Municipal Act, 1884.
- Ss. 262 & 450 (3), Bengal Municipal Act, XV of 1932.
- S. 216, Behar and Orissa Municipal Act, 1922.
- S. 139, Bombay Municipal Boroughs Act, 1925.
- S. 111, Bombay District Municipal Act, III of 1901.
- Ss. 253-6, Bombay City Municipal Act, III of 1888.

- S. 137-4, Burma Municipal Act, III of 1898.
- Ss. 275-7 & 507, Calcutta City Municipal Act, III of 1923.
- S. 152, Central Provinces Municipal Act, II of 1922.
- S. 335, Madras District Municipal Act, V of 1920.
- S. 270, U. P. Municipalities Act, 1916.

English Law:—

- Ss 41, 102 & 105 Public Health Act, 1875.

Delegation.—Powers under this section can be delegated under S. 33 of this Act.

Powers of entry.—For inspecting, surveying or executing any work authorized by the Municipal Act or any bye-law, rule or order made thereunder, powers are given to the officers of the local authorities to enter into or on any building or land subject to certain conditions. Where a notice is bad in law, entry on the land to give effect to the terms of the notice is trespass for which the corporation is

liable in damages to the owner of the land. A notice of entry has to be given before the officer of a corporation enters the premises of a private owner; the notice is a condition precedent to the right of the municipality to enter. Once the notice is given, the right arises; and the power of the municipality to enter carries with it by necessary implication an obligation on the part of the occupant of the land to whom the notice is given to give every reasonable facility to the municipality to enter and not to obstruct. If the occupant does any act to prevent its exercise, his act may amount to wrongful restraint or wilful obstruction punishable under the Penal Code. The notice of entry cannot contain any directions to the occupant; and if any directions are given, they are *ultra vires* and the occupant is not bound to obey the same. Aiyangar's "Law of Municipal Corporations in British India," p. 789.

No previous notice is necessary if the entry is to be made into a latrine, privy or urinal.

No penalty.—Ss. 203 and 204 carry no penalty if the owner or occupier refuses to suffer the entry or inspection. The general provisions of S. 221 will either be applicable or the men obstructing may be prosecuted under the Indian Penal Code for obstructing a public servant.

204. (1) The committee or executive officer may authorize any person after giving three hours' notice to the occupier, or, if there be no occupier, to the owner of any building to enter and inspect it at any time between sunrise and sunset where such inspection appears necessary for sanitary reasons.

Inspection
of buildings,
etc.

(2) If the building to be inspected is a stable for horses or a house or shed for cows or other cattle, previous notice shall not be requisite before inspection.

Notes.

S. 107 of the old Act.

Analogous Law:—

Ss. 361 & 389, Bengal Municipal Act, XV of 1932.	S. 137-AA, Burma Municipal Act, III of 1898.
S. 164, Bombay Municipal Boroughs Act 1925.	S. 156, Central Provinces Municipal Act, II of 1922.
S. 132, Bombay District Municipal Act, III of 1901.	S. 331, Madras City Municipal Act, 1919.
S. 374, Bombay City Municipal Act, III of 1888.	S. 179, Rangoon City Municipal Act, 1922.

Executive Officers Act.—In municipalities to which this Act has been extended the words in italics must be deemed to have been added after the word "committee."

Delegation.—Powers under this section can be delegated under S. 33.

Other
powers of
entry on
buildings or
land.

205. *The committee or executive officer may authorize any person, after giving twenty-four hours' notice to the occupier, or, if there be no occupier, to the owner of any building or land, at any time between sunrise and sunset—*

- (a) to enter on and to survey, and to take levels or measurements of any buildings or land;
- (b) to enter into any building or on any land for the purpose of examining works under construction, of ascertaining the course of sewers or drains, or of executing or repairing any work which it is by this Act empowered to execute or to maintain;
- (c) to enter into any building or on any land for the purpose of inspecting or repairing gas, water, telephonic, electric or other installations and for taking readings of meters connected therewith;
- (d) to enter into any building or on any land for the purpose of ascertaining whether any building is being or has been erected or re-erected without sanction or in contravention of any sanction given by the committee or of any bye-laws made under Section 190 or of any scheme sanctioned under Section 192 and to take such measurements and do any other such acts as may be necessary for such purpose.

Notes.

S. 108 of the old Act, clause (c) was introduced in 1911. Clause (d) has been inserted by S. 82 of the Punjab Municipal Amendment Act, III of 1933.

Executive Officers Act.—Where this Act is extended the section must be deemed to have been amended by the addition of the words in italics after the word “committee.”

Analogous Law:—

- S. 512, Bengal Municipal Act, XV of 1932.
- S. 307 (1), Behar and Orissa Municipal Act, 1922.
- S. 159, Bombay District Municipal Act, III of 1901.
- S. 488, Bombay City Municipal Act, III of 1888.

S. 137-CU, Burma Municipal Act, III of 1898.

S. 153, Central Provinces Municipal Act, II of 1922.

S. 378, Madras City Municipal Act, 1919.

S. 287, U. P. Municipalities Act, 1916.

English Law:—

S. 119, Public Health Act, 1875.

Delegation.—Powers under this section can be delegated under S. 33.

Penalty.—Penalty for refusal to suffer inspection or to allow entry is provided under S. 209.

206. The committee or executive officer may authorize any person at all reasonable times to enter into and to inspect any market, building, shop, stall or place used for the sale of food or drink for man, or as a slaughter-house, or for the sale of drugs, and to inspect and examine any food or drink, animal or drug, which may be therein; and, if any article of food or drink, or any animal therein appears to be intended for the consumption of man and to be unfit therefor, may seize and remove the same or may cause it to be destroyed or to be so disposed of as to prevent its being exposed for sale or used for such consumption:

Power to inspect places for sale of food or drink, etc., and to seize unwholesome articles exposed for sale

and, in case it is reasonably suspected that any drug is adulterated in such manner as to lessen its efficacy or to change its operation or to render it noxious, to remove the same, giving a receipt therefor, and to cause the owner thereof to be brought before a magistrate for enquiry whether any offence has been committed in respect thereof, and for orders as to the disposal of the said drug.

Notes.

S. 110 of the old Act.

Analogous Law:—

S. 251 (B) & (C), Bengal District Municipal Act, 1884

Ss. 427-29, Bengal Municipal Act, XV of 1932.

Ss. 285, 286 & 288, Behar and Orissa Municipal Act, 1922.

S. 176, Bombay Municipal Boroughs Act, 1925.

S. 142, Bombay District Municipal Act, III of 1901.

Ss. 414-6, Bombay City Municipal Act, III of 1888.

S. 137-Y, Burma Municipal Act, III of 1898.

Ss. 418, 419, 420 & 421 (2),

Calcutta City Municipal Act, III of 1923.

Ss. 159 & 215, Central Provinces Municipal Act, II of 1922.

Ss. 312, 314 & 316, Madras City Municipal Act, 1919.

Ss. 272, 274, 276, & 277, Madras District Municipal Act, V of 1920.

Ss. 138 & 140, Rangoon City Municipal Act, 1922.

Ss. 243-4, U. P. Municipalities Act, 1916.

English Law:—

S. 116, Public Health Act, 1875.

Executive Officers Act.—The words “or executive officer” must be deemed to have been added after “committee” in municipalities to which the Executive Officers Act is extended.

Delegation.—Powers under this section can be delegated under S. 33.

Comments.—Under this section all articles except drugs can be seized, destroyed or otherwise disposed of to prevent

their being used for human consumption if on inspection they are found to be unfit for use. As regards drugs the officer cannot destroy it himself but must take the article to the magistrate for disposal or destruction as the case may be.

It must be carefully noticed that the section does not apply to articles of food or drink for animals nor to articles prepared for manure or similar purposes.

Intended for human consumption.—The article ordered to be destroyed must be found to be intended for human consumption. Damaged rice purchased by a person who intended to sell it as food for pigs could not be ordered to be destroyed on the mere ground that there was risk that this rice might be sold for human consumption. 30 Cal. 421.

The person authorized has no jurisdiction to seize or remove the article of food unless the article was intended for consumption and was unfit for the purpose. Where certain tins were made over to an association formed for the purpose of prevention of adulteration to find out if the *ghi* was adulterated, there is no jurisdiction to seize such *ghi* as it was not in possession of the association for purposes of sale for human consumption. 43 I. C. 796.

Exposure.—See Notes under S. 197.

It cannot be contended that because S. 418, clause (2) of Calcutta Municipal Act of 1923 puts the burden upon the accused to prove that the article is not intended for human consumption in a case of prosecution under this Chapter, it indicates that in all other cases, as for example, in a case where the article is ordered to be destroyed under S. 421 the *onus* will lie upon the corporation to prove that it is intended for human consumption. Cf. 1929 Cal. 283; 49 C. L. J. 502.

A court is entitled to take for granted when it is not denied that *ghi* is an article intended for human consumption. It is possible that it can be employed for remote or extraordinary purposes but the ordinary presumption that *ghi* is intended for human consumption is not a presumption of law but a supposition based on common sense when there is no assertion to the contrary. 1929 Cal. 283; 49 C. L. J. 502.

Des ruction.—Where the article can be disposed of so as to prevent its use for human consumption it is not necessary to destroy it. When grain damaged by rain became unfit for human consumption but could be used as fodder for cattle, its destruction was held to be not justified. Cf. 1931 Sindh 39.

207. The committee or executive officer by any person authorised by it or him in this behalf, may at all reasonable times enter into and inspect any market, building, shop, stall or place used for the sale of any goods, food, drink or drug, and may inspect any instruments for weighing, weights or measures found therein and test the same with other weights and measures, and may seize any such instrument for weighing, weight or measure which the person so authorized reasonably believes to be false or not in accordance with bye-laws made by the committee under Section 188, clause (e) (iii), and may take the same to be examined or tested by the officer appointed for the purpose.

Inspection
of weights
and measures
and seizure
of false
weights etc

*

(2) Every person for the time being in charge of or employed in such market, building, shop, stall or place shall, if so requested by the person making such inspection, produce for such inspection and comparison all instruments for weighing, weights and measures kept therein.

Notes.

The section is new.

Executive Officers Act.—Under S. 16 of this Act the Municipal Act is deemed to have been amended by the addition of the words in italics after the word “committee.” Similar addition of words in italics appears to be necessary after the word ‘it’ in line 2; though that Act does not effect this change. This seems to be an omission.

Analogous Law:—

S. 415 (2), Bengal Municipal Act, XV of 1932.	Municipal Act, III of 1888.
S. 177, Bombay Municipal Boroughs Act, 1925	S. 162, Central Provinces Municipal Act, II of 1922.
S. 143, Bombay District Municipal Act, III of 1901.	S. 337, Madras District Municipal Act, V of 1920.
Ss. 418 (3) & 419, Bombay City	S. 130, Rangoon City Municipal Act, 1922.

Delegation.—Powers under S. 207 can be delegated under S. 33.

Use of honest weights or measures.—Sec 41 Bom. 580 noted on p. 28.

208. If there are reasonable grounds for believing that any animal has been, is being, or is about to be, slaughtered in any place or premises not fixed for such purpose under Section 167 or in contravention of any bye-law made under Section 188 (e) (i), the committee or executive officer by any person authorized by it or him in this behalf may, at all reasonable times, enter into and inspect any such place or premises:

Inspection
of places for
illicit slaughtering
of animals

Provided that no entry shall be made under the provisions of this section without an order in writing from the president or

from the Medical Officer of Health. Such order shall specify the place or premises to be entered and the locality in which the same is situate and the period (which shall not exceed seven days) for which it is to remain in force.

Notes.

This is a new section.

The section has been amended by Act II of 1923. Medical Officer of Health is used instead of "health officer." Figure (1) after S. 188 has also been omitted.

Executive Officers Act.—In municipalities to which that Act has been made applicable the section must be deemed to have been amended by the insertion of the words in italics after the word "committee." A similar insertion of words in italics seems necessary after the word "it" though the Act is silent. This omission is not being rectified even in the proposed amendment of the Act.

Analogous Law:—

S. 426, Bengal Municipal Act, XV of 1932.	Act, III of 1923.
S. 413, Bombay City Municipal Act, III of 1888.	S. 312, Madras City Municipal Act, 1919.
S. 137-W, Burma Municipal Act, III of 1898.	S. 272 (2), Madras District Municipal Act, V of 1920.
S. 417, Calcutta City Municipal Act, III of 1923.	S. 128, Rangoon City Municipal Act, 1922.

Delegation.—Powers under S. 208 can be delegated under S. 33.

Refusal to
offer inspec-
tion under
Sections 205
& 208.

209. Whoever, in contravention of Section 205 or Section 206 or Section 207 or Section 208 or Section 211, refuses to suffer inspection of any premises, food, drink, drug, animal, weight, measure or instruments for weighing, or, in contravention of Section 207, clause (2) refuses to produce any weight, measure or instrument for weighing to which he has access, shall be punishable with fine which may extend to two hundred rupees.

Notes.

This is also a new section.

Analogous Law:—

S. 513, Bengal Municipal Act, XV of 1932.	S. 313, Madras City Municipal Act, 1919.
Ss. 307 (2), Behar and Orissa Municipal Act, 1922.	Ss. 273 & 319, Madras District Municipal Act, V of 1920.
S. 509, Calcutta City Municipal Act, III of 1923.	Ss. 277 (1), Madras Act, IV of 1884.

English Law:—

S. 118, Public Health Act, 1875.

210. (1) The committee or executive officer may authorize any person to enter upon at any reasonable time and inspect any house or building which is suspected to contain petroleum, explosive or other inflammable material, in excess of the quantity permitted to be kept in such house or building under the provisions of this Act or of any rule, bye-law or public notice made or published thereunder.

Search for inflammable or explosive material in excess of authorized quantity

(2) Should any such excess quantity of such material be discovered, it may be seized and held subject to such order as a magistrate may pass with respect to it.

(3) If the magistrate decide that the material seized was stored in the house or building contrary to the provisions of this Act or of any rule, bye-law or public notice made or published thereunder, he shall pass an order confiscating the same.

(4) Subject to any general rules for the time being applicable thereto, the material confiscated may be sold by order of the magistrate, and the proceeds, after defraying the expenses of such sale, shall be credited to the municipal fund.

(5) No order of confiscation under this section shall operate to prevent any other criminal or civil proceedings to which the person storing the material in excessive quantity may be liable.

Notes.

S. 120 of the old Act.

Executive Officers Act.—In municipalities to which the Act has been extended, the words in italics must be deemed to have been added after the word “committee.”

Analogous Law:—

S. 399, Bengal Municipal Act, XV of 1932.	S. 158, Central Provinces Municipal Act, II of 1922.
S. 272, Behar and Orissa Act, VII of 1922	S. 258, U. P. Municipalities Act, II of 1916.

Delegation.—Powers under this section can be delegated under S. 33.

Provision of the Act or bye-law.—*Cf.* S. 121 and S. 188 (g).

Public notice.—*See* S. 180.

Appeal.—The order of forfeiture is appealable under S. 227.

A provision similar to S. 209 seems to be necessary for the purposes of S. 210. Persons obstructing the officers or persons authorized by the committee may be punished under S. 221.

211. (1) The Medical Officer of Health or any other officer authorized by the committee or executive officer may enter, at any time, after three hours' notice, into any building or premises in which any infectious disease is reported or suspected to exist, for the purpose of inspecting such building or premises.

(2) No such inspection shall be made except in the hours between sunrise and sunset.

Recent changes.—Sub-section 1 has been substituted by S 83 of the Punjab Amendment Act, III of 1933.

Executive Officers Act.—S. 211 must be deemed to have been amended by S. 16 of Executive Officers Act by the insertion of words in italics after the word "committee." The reference to unamended section must be taken to relate to the amended Section by virtue of S. 6 of the General Clauses Act, 1898.

Analogous Law:—

S. 179 (2) (b), Bombay Municipal Boroughs Act, 1925.

S. 422, Bombay City Municipal Act, III of 1888.

S. 436, Calcutta City Municipal

Act, III of 1923.

S. 289, Madras District Municipal Act, V of 1920.

English Law:—

S 137, Public Health Act, 1875.

Delegation.—Powers under S. 211 can be delegated under S. 33.

*
eral ex-
ion.

212. The committee or executive officer may authorize persons to exercise the powers of entry conferred by the foregoing sections of this Chapter either generally in regard to all buildings and lands or particularly in regard to specified buildings and lands or classes of buildings and lands.

Notes.

This section is new.

Executive Officers Act.—The words in italics after the word "committee" must be deemed to have been added by S. 16 of the Executive Officers Act, in municipalities to which that Act has been extended.

cautions
observ-
enter-
wellings

213. When any building used as a human dwelling is entered under this Act, due regard shall be paid to the social and religious sentiments of the occupiers; and before any apartment in the actual occupancy of any woman, who according to custom does not appear in public, is entered under this Act, notice shall be given to her that she is at liberty to withdraw, and every reasonable facility shall be afforded to her for withdrawing.

Notes.

S. 202 of the old Act.

Analogous Law:—

S. 197 Proviso, Bombay Municipal Boroughs Act, 1925

S. 159 Proviso, Bombay District Municipal Act, III of 1901.

S. 137-V, Proviso, Burma Municipal Act, III of 1898.

S. 507, Calcutta City Municipal

pal Act, III of 1923.

S. 151, Central Provinces Municipal Act, II of 1922.

S. 335 Proviso (c), Madras District Municipal Act, V of 1920

S. 287 (2) (c), U. P. Municipalities Act, 1916.

Delegation.—Power under this section can be delegated under S. 33.

Notices and consequences of non-compliance.

214. When any notice under this Act, requires any act to be done for which no time is fixed by this Act, it shall fix a reasonable time for doing the same.

Reasonable time for compliance to be fixed

Notes.

S. 147 (1) of the old Act.

Analogous Law:—

S. 192 (5) (a), Bombay Municipal Act, 1925

S. 154 (5), Bombay District Municipal Act, III of 1901.

S. 489, Bombay City Municipal Act, III of 1888.

S. 144, Burma Municipal Act, III of 1898.

S. 510, Calcutta City Municipal

Act, III of 1923.

S. 167, Central Provinces Municipal Act, II of 1922

S. 380, Madras City Municipal Act, 1919

S. 339, Madras District Municipal Act, V of 1920.

S. 302, U. P. Municipalities Act, 1916.

Acts for which time is fixed.—See Ss. 115, 118, 128, 120, 124 and 134.

Reasonable time. - What is reasonable time will depend on the circumstances of each case and no hard and fast rule can be laid down; under S. 219 the court has power to determine if the time given for compliance was reasonable.

Act for which no time is fixed.—Where the Act does not fix any time for compliance with a notice issued under the provisions of the Municipal Act, the committee should itself in the Resolution fix the time for compliance and should not leave the office to fill in the notice any time they deem fit. It is for the committee to decide the reasonableness of the notice and not for the committee's officers. 1925 Lah. 146; 81 I. C. 122.

Requirements in cases where time is fixed.—Where the section fixes the time for compliance, the requirements should be such as can be reasonably carried out within the time, otherwise the notice will be void. 50 I. C. 247.

A notice under S. 125 directing the construction of a latrine according to Health Officer's directions giving ten days, which might prove insufficient for securing necessary directions from that official is not good. 48 I. C. 882.

See 1930 Oudh 434—noted under S. 31.

Validity of notice—Reasonable time.—Where a statute provides that an authority may serve a notice for work to be done within a time to be specified in such notice, it must, in order to be valid and not illusory notice, specify a time within which the work can reasonably be completed. The authority must consider the nature and extent of the work—must fix a time during which the work can be done—and they have no discretion to fix a shorter time and where a reasonable time is not fixed, the notice is bad and the expenses incurred by the local authority in carrying out the work cannot be recovered. *Bristol Corporation v. Sinnott*, (1918) 1 Ch. 62, 82 J. P. 9. *Ryall v. Hart*, (1923) 2 K. B. 464; 87 J. P. 81.

The question of reasonable time can be raised in court.

Authentica-
tion, service
and validity
of notice.

215. (1) Every notice issued by a committee under this Act or under any rule or bye-law shall be in writing, signed by the president, vice-president, secretary or assistant secretary, or by the members of any sub-committee specially authorized by the committee in that behalf and every such notice and every order made under Section 193 may be served on the person to whom it is addressed, or delivered or left at his usual place of abode or business with some adult male member or servant of his family, or, if it cannot be so served, may be affixed to some conspicuous part of his place of abode or business:

Provided that such notice may be signed by the Medical Officer of Health when it is issued by the committee under any section of this Act under which power may be delegated to the Medical Officer of Health under clause (b) of Section 33 and has been so delegated.

(2) When the place of abode or business of the person to whom the notice is addressed is not within the limits of the municipality, the notice may be served by posting it in a registered cover addressed to his usual place of abode.

(3) If the owner of any property has no place of abode or business within the municipality, every such notice addressed to him as such owner may be served on the occupier.

(4) When the place of abode or business of the occupier of any property is not known, every such notice addressed to him as such occupier may be served by affixing it to some conspicuous part of the property.

(5) No notice issued by the committee under this Act or under any rule or by-law shall be invalid for defect of form.

Notes.

S. 191 of the old Act.

The section has been amended by Act II of 1923 : words " Every such notice and every order made under S. 193 " have been inserted between the words " behalf and " and " may." Proviso to sub-section (1) is new. Similar provision would seem to be necessary for other officers to whom powers can be delegated under S. 33.

Great difficulty was experienced in delivering orders of refusals to persons who had applied for sanction of buildings. Such persons generally avoided the receipt of orders to avail of the time limit laid down in S. 193. The difficulty has been removed by the amendment ; actual delivery of the orders to the persons concerned will not be necessary.

Delegation.— Powers under this section can be delegated under S. 33.

Executive Officers Act.— In municipalities to which this Act has been extended S. 215 (1) shall be deemed to have been amended by S. 17 of Schedule II of Punjab Executive Officers Act, 1931.

The amended sub-section (1) will read as follows:—

215. (1) Every notice issued under this Act or under any rule or bye-law, by a committee or by its executive officer or by the person authorized by the committee or by the executive officer shall be in writing signed by the executive officer or by any person authorized in this behalf, and every such notice and every order made under Section 193 may be served on the person to whom it is addressed or delivered or left at his usual place of abode or business with some adult male member or servant of his family or if it can not be so served may be affixed to some conspicuous part of his place of abode or business.

Section 215
(1) as amended
by Executive
Officers
Act

Proviso to this clause is to be omitted.

Analogous Law :—

S. 356, Bengal District Municipal Act, 1884.	Ss. 502-5, Calcutta City Municipal Act, III of 1923.
Ss. 509-11, Bengal Municipal Act, XV of 1932	Ss. 253-5, Cantonment Act, II of 1924
S. 357, Behar and Orissa Municipal Act, 1922.	S. 168, Central Provinces Municipal Act, II of 1922.
S. 192, Bombay Municipal Boroughs Act, 1925.	S. 374, Madras City Municipal Act, 1919.
S. 154 (1), Bombay District Municipal Act, III of 1901	S. 331, Madras District Municipal Act, V of 1920.
Ss. 484-5, Bombay City Municipal Act, III of 1888.	Ss. 303-5, U. P. Municipalities Act, 1916.
Ss. 203-4, Burma Municipal Act, III of 1898.	English Law :—
	Ss. 266-7, Public Health Act, 1875,

Authentication.—A notice issued from the office of a municipal committee which purported to be under S. 99 of Act, XIII of 1884 (Cf. S. 172 of the present Act) but was not signed by the president or secretary as prescribed by S. 162 (= S. 215 of the Act), but by a member only, held to be materially defective and invalid; the defect not being merely one of form which according to the last clause could be immaterial. P. R. 8 of 1886 Cr.

Adult male member.—Adult does not necessarily mean major within the meaning of Majority Act, but a person of such an age as to be capable of and responsible for the due communication of the notice to the member of the family for whom it is intended. A person above the age of 16 was held to be an adult person. 34 Cal. 787, 35 Cal. 286.

Service-estoppel.—Where a notice actually reaches the person to be served he is estopped from saying that the notice is not validly served. In this case the person actually served was son-in-law of the person to be served and it was contended that he was not a member of the family. The son-in-law resided there and the notice reached the addressee. 35 Cal. 286.

Notice to be in writing.—Under General Clauses Act this will include printing, lithography and other modes of representing or reproducing words in a visible form.

Signed.—A notice under Section 171 on a printed form filled with the name of the secretary in print at the foot was held a sufficient signature in *Brydges v. Dix*, (1891) 7 T. L. R. 215. It is doubtful whether the signature of a clerk in the name of the secretary to the committee would be sufficient. See *France v. Dutton*, (1891) 2 Q. B. 203.

A notice must be signed by the officer who is legally authorized to sign and it is materially defective, if it is not signed by the proper officer; and the defect is not cured by the usual provision contained in most of the Acts to the effect that no notice shall be invalid for defect of form: 8 P. R. 1886 Cr. If the notice is defective, it need not be obeyed and there can be no conviction for disobedience of such a notice: 36 All. 227. When a notice is invalid, it need not be complied with; but the corporation may take proceedings under a fresh notice: 1 C. L. J. R. 51. The mistake of a few rupees in a notice, caused by an error in addition, is not sufficient to impeach or affect the same. 9 W. R. 562.

Where an officer leaves a facsimile stamp of his signature behind him, which the peons continue to use, a

warrant issued stamped by such facsimile is quite irregular and invalid.

Under a Municipal Act it was provided that a warrant must bear the signature of the chairman. Signature must be taken in its accepted sense of the Sign Manual. The fact that in S. 2 (20), Civil Procedure Code, sign is used as including stamp has no bearing on the Madras District Municipal Act. But if the chairman happens to be illiterate, under the General Clauses Act, he may affix his mark. Cf. 1930 Mad. 430 ; 121 I. C. 139.

Mode of service.—This section and Ss. 316 and 217 provide various modes of service of municipal notices. The detailed provision with reference to the service of notices on owners or occupiers should be strictly observed. The requirements of the law must be strictly followed to make the service effectual. The "owner" or "occupier" need not be named. If the address is on the outside, its omission in the body of the document is immaterial. *Limforth v. Butler* (1899), 1 Q. B. 116. A notice affixed on the premises is good, although the name and residence of the owner may be known: *Woodford U. D. C. v. Henwood*, (1900) 64 J. P. 148. When a document is sent by post, it is deemed to have been served at the time the letter containing it would be delivered in the ordinary course of post and it is sufficient to prove that it was properly addressed and that the postage was prepaid. *Walthamstow U. D. C. v. Henwood*, (1897) 1 Ch. 41. Where a statutory method of serving notice has been followed it is not necessary to show that the addressee has received it. *King v. Westminster Union Assessment Committee* (1917) 1 K. B. 832.

Where the house was not in the occupation of the recorded owner but his brother, and, although the municipal taxes were levied on the owner, they were collected from his brother:

Held, the service of the distress warrant on the brother of the owner was a proper service. 75 I. C. 719; 1922 Pat. 532.

Notice to be addressed to owner.—Under Ss. 215 and 216 it is open to the municipality to issue the notice addressed to the owner of the premises without specifying his name. If they do so they can prosecute the trustee who was recovering rents from the tenants of the property as the owner of the premises under S. 3 (11) but he could not be prosecuted for failure to comply with a notice addressed to another person and delivered to him as the agent of that person. 1925 Sind 262; 88 I. C. 187 and 1931 Mad. 138.

S. 215 (2) does not apply to the case of a person who is permanently residing within the local area and who has

given his home address as the places to which notice were to be sent, who for purpose of business had temporarily left for a place outside the local area. 1931 Mad. 138.

Owner and occupier.—See Notes under S. 3 (10) and (11).

Conspicuous part.—The notice must be affixed to some part which can attract attention of people passing by it. What is a conspicuous part is a question of fact. *West Ham Corp. v. Thomas* (1908) 73 J. P. 65.

Notice by the committee.—The notice must be by the authority of the committee. If it is issued by the authority of any other officer that officer must have been delegated with authority to do so under S. 33.

Attestation.—The law of service of notices contained in this section does not require the report of the service to be attested by any outside authority. Cf. 49 I. C. 928.

Name of addressee doubtful.—A new street being about to be paved by urban authority, they addressed a notice to pave to the owner of vacant field whose name was doubtful, thus "To B, or other, the owner or other the occupier, etc." The notice was affixed to a conspicuous part of the premises. No notice ever reached B: *Held* that this notice was sufficient. *Butler v. Gravesend U. S. A.* (1894). 58 J. P. 446.

Service on a servant.—Service on a servant is valid. 9 W. R. 562.

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occupier
different
persons

216. Whenever it is provided by this Act that any notice may be given to the owner or occupier of any land or building, and the owner and occupier are different persons, such notice shall be given to the one of them primarily liable to comply with such notice, and in case of doubt to both of them:

Provided that in any such case, where there is no owner resident within the municipality, the delivery of such notices to the occupier shall be sufficient.

Notes.

S. 147 (2) of the old Act.

Analogous Law:—

S. 357, Bengal District Municipal Act, 1884.

S. 514, Bengal Municipal Act, XV of 1932.

S. 358, Behar and Orissa Municipal Act, 1922.

S. 154 (2), Bombay District Municipal Act, III of 1901.

Ss. 502-6, Calcutta City Municipal Act, III of 1923.

Ss. 254-5, Cantonment Act, II of 1924.

Ss. 168-9, Central Provinces Municipal Act, II of 1922.

S. 267, U. P. Municipalities Act, 1916.

English Law:—

S. 267, Public Health Act, 1875.

217. When any notice is under the provisions of this Act to be given to or served on the owner or occupier of any property and he is unknown, it may be given or served—

Mode of giving notice to owner or occupier of property

- (a) by delivering a written notice to some person on the property, or, should there be no person on the property to whom it can be delivered, by affixing it to some conspicuous part of the property; or
- (b) by putting into the post a pre-paid letter containing a written notice and addressed by the description of the "owner" or "occupier" of the property (naming it) in respect of which the notice is given, without further name or description.

Notes.

S. 192 of the old Act.

Analogous Law:—

S. 357, Bengal District Municipal Act, 1884.	Ss. 502-6, Calcutta City Municipal Act, III of 1923.
S. 359, Behar and Orissa Municipal Act, 1922.	S. 255, Cantonment Act, II of 1924.
S. 204, Burma Municipal Act, III of 1898.	S. 170, Central Provinces Municipal Act, II of 1922.

See Notes under S. 215.

218. Every public notice given by a committee under this Act or any rule or bye-law shall be published by proclamation or in such other manner as the local Government may, by rule, direct.

Publication of public notices

Notes.

S. 193 of the old Act.

Analogous Law:—

S. 354, Bengal District Municipal Act, 1884	S. 201(2), Burma Municipal Act, III of 1898.
S. 507, Bengal Municipal Act, XV of 1932	S. 499, Calcutta City Municipal Act, III of 1923.
S. 356, Behar and Orissa Municipal Act, 1922.	S. 255, Cantonment Act, II of 1924.
S. 192 (3), Bombay Municipal Boroughs Act, 1925	S. 171, Central Provinces Municipal Act, II of 1922.
S. 154 (3), Bombay District Municipal Act, III of 1901.	S. 372, Madras City Municipal Act, 1919
S. 480, Bombay City Municipal Act, III of 1888	S. 304, U.P. Municipalities Act, 1916.

Mode of publication:—It is laid down in rule 5 of the General Administration Rules as follows:—In every case in which public notice is to be given by a committee in exercise of a power conferred or in discharge of an obli-

gation imposed by the Punjab Municipal Act, 1911, or by any rule or bye-law made thereunder, such notice shall be published by proclamation, and a copy of such notice shall be affixed in some conspicuous spot accessible to the public at the place of meeting of the committee. A copy of such notice shall also be supplied to the manager of every newspaper which is published within the limits of the district in which the municipality is situate.

It is not necessary that manager should be asked to print the notice at the cost of municipal committee. The manager may or may not treat it as a news.

Public notice.—Sections 103, 106, 107, 109, 149, 152, 154, 159, 168 (2), 173 (3), 180, 192 (2) and 210 require the issue of public notices.

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219. Whoever disobeys any lawful direction or prohibition given by the committee by public notice under this Act or any written notice lawfully issued by it thereunder, or fails to comply with the conditions subject to which any permission was given by the committee to him under those powers, shall, if the disobedience or omission is not an offence punishable under any other section, be punishable with fine which may extend to fifty rupees, and, in the case of a continuing breach, with a further fine which may extend to five rupees for every day after the first during which the breach continues:

Provided that, when the notice fixes a time within which a certain act is to be done and no time is specified in this Act, it shall rest with the magistrate to determine whether the time so fixed was a reasonable time within the meaning of this Act.

Notes.

Section 169 of the old Act.

Analogous Law :—

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| <p>Ss. 218, 219 & 271-2, Bengal District Municipal Act, 1884.
S. 500, Bengal Municipal Act, XV of 1932.
S. 242, Behar and Orissa Municipal Act, 1922.
S. 193, Bombay Municipal Boroughs Act, 1925.
S. 155, Bombay District Municipal Act, III of 1901.
S. 471, Bombay City Municipal Act, III of 1888.
Ss. 148 & 149, Burma Municipal</p> | <p>Act, III of 1888.
Ss. 488 & 593, Calcutta City Municipal Act, III of 1923.
S. 199, Central Provinces Municipal Act, II of 1922.
S. 357, Madras City Municipal Act, 1919
S. 313, Madras District Municipal Act, V of 1920.
Ss. 205 & 206, Rangoon City Municipal Act, 1922.
S. 306, U. P. Municipalities Act, 1916.</p> |
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Executive officers' orders.—Where the Executive Officers Act is applicable disobedience of the orders of the executive officers is not provided for. In most cases the executive officers have now been empowered to issue notices and to give lawful directions. If such notices are disobeyed or the directions are not complied with, the prosecution for disobedience of such orders and notices apparently will not lie under S. 219. This seems to be an omission. Cf. S. 186 (i) of Bombay District Municipal Act as amended where disobedience of the orders of the executive officers is specifically made punishable. An executive officer though possessing large powers of the committee cannot be considered to be the committee for purposes of this section.

Limitation for prosecution.—In Punjab there is no provision to limiting the powers of prosecution to a certain period from the date of commission of the offence. In the absence of such a provision we find prosecutions sometimes started years after the commission of the offence.

Direction or prohibition by public notice.—Municipal committees have power to issue lawful direction or prohibition by public notice under the following sections:—Ss. 103, 106, 107, 108, 109, 149, 152, 154, 159, 168, 171 (3) and 180. Only Ss. 107, 108, 152 and 168 provide punishment in case of disobedience. The disobedience of directions or prohibitions issued under other sections is punishable under this section.

Written notices.—The municipal committees have power to issue notices under Ss. 113 to 120, Ss. 125 to 128, and Ss. 131, 140, 149, 172, 174, 175, 181, 195, 195-A.

Disobedience not punishable under any other Section.—Cf. Ss. 123, 128, 135, 152, 168 and 195-A, which specifically provide punishment. See P. R. 4 of 1894 noted under S. 123.

Committee.—The committee issuing the order or notice must be lawfully constituted. The order of a municipal committee passed at a meeting presided over by a president who was neither elected nor appointed as member of the committee nor its president as required by S. 20 of the Act is defective and invalid. Hence disobedience of such an order is no offence. P. R. 46 of 1905 Cr.

Similarly the notice issued by any other authority except the committee or executive officer is not a legal notice. The accused was convicted of a breach of bye-law No. 23 of the Lahore Municipal Bye-laws for non-compliance with a notice purporting to be issued under the said bye-law requiring him to remove within four days a *thara* recently constructed in front of his house which encroached upon the public road. It

appeared that the notice in question was issued by the Deputy Commissioner as President of the Municipal Committee, on his own individual authority and not by the committee as required by the bye-law: *Held* that the notice required by the bye-law to be given by the committee not having been given to the accused, he could not be held to have committed a breach of the bye-law and that his conviction for such breach was therefore unsustainable

It was contended for the committee in the above case that the notice referred to was legal by virtue of a resolution of the committee to the effect "that the committee authorized the president or secretary of the committee to take notice of any breach of the bye-law and to take action on the same, reporting said action for the approval of the committee of the ensuing meeting." This resolution had not been put in evidence in the original Court: *Held* that even if such resolution could be considered, it would not affect the case or validate the notice, as (1) it only authorized the president to take notice of a breach of the bye-laws, but in the present case no breach of the bye-law in question had occurred; for the breach of the bye-law consists in disobeying a notice issued by the committee and as the committee had issued no notice, no breach of the bye-law could have been committed by the accused, (2) if the resolution was to be understood to confer upon the president the powers which the committee possessed under the bye-laws, *e. g.*, the power to give notice for the removal of obstruction, still the respondent's contention would fail, as there is no provision in the Municipal Act or in the bye-laws framed under the Act which would justify the committee in delegating the powers conferred upon them as a committee to any person. P. R. 32 of 1881 Cr.

Note.—At that time there was no provision corresponding to S. 33 of Act, III of 1911.

Written notice lawfully given—Notice must be clear.—A municipality taking proceedings for a penalty under the Act ought to make the sanction and orders or conditions for new buildings or erections so conspicuously clear as to leave no room for controversy.

Use of penal provisions.—Penalty sections must be used for bad cases where the individual has been contumacious and has palpably acted *mala fide*. But the penalty is only intended *in terrorem* and not to be used vindictively for technical offences. 1924 All. 200; 21 All. L. J. 774.

Notice or direction partly legal or partly illegal.—If the notice contains two directions one of which is good and the other bad the notice must be treated as entirely bad. To hold

otherwise would impose on the accused the obligation of picking out from the notice the requirement which was within the power of the municipal committee to call upon him to carry out. 1933 Lah. 935; 1 Weir 749.

Fresh notice if the previous one illegal—Where a notice issued by the committee is illegal, the committee can issue fresh notice. 1 Weir 749.

Lawful direction, etc.—A person cannot be guilty of disobedience unless the direction or prohibition is lawful or the notice issued is lawful, *i.e.*, notice, direction or the prohibition must be such as is authorized by the provisions of this Act. See Notes to Ss. 113 to 119 and Ss. 125 to 136.

S. 107 (2) of the Bombay District Municipal Act does not empower a municipality to lawfully direct an owner or occupier to do a certain thing himself. It provides that a municipality may by written notice do the thing themselves; therefore the disobedience of a notice directing an owner or occupier to remove a cesspool within a week is no offence under S. 155 of that Act. 11 Bom. L. R. 1349; 4 I. C. 835.

Before a conviction under S. 219 can be had for the disobedience of a notice issued by a municipality the court must be satisfied that the notice was lawfully issued. 23 I. C. 745; 36 All. 185.

Direction or orders the disobedience of which is made punishable must be directions and orders authorized by the Act.

There is no provision under which a general direction can be issued prohibiting house-owners from discharging sullage or other water on municipal property. Such general directions may be framed as a bye-law. Provisions such as Ss. 129, 132, etc., provide for special notice regarding drainage, etc. Cf 54 I. C. 494.

Notice calling upon a person to vacate a shop is not valid as there is no power under the Act under which a person can be required to give up his shop situate on land not belonging to committee. 17 I. C. 713; 19 All. L. J. 286.

To render a person liable under the section for failure to comply with a notice, the notice must be a legal notice and a notice issued by some authority competent to issue it. When that authority is the board or chairman the notice issued and signed by any other authority is not valid. 55 I. C. 302.

It is not a condition precedent for prosecution under S. 219 for failure to provide a latrine that the committee should itself have constructed the latrine. 48 I. C. 161.

Section 219 does not prevent an accused person from setting the defence that the paper served upon him was not a notice issued by the committee or by the authority of any person to whom the power exercisable by the committee as a whole had been delegated. If such a defence is set up the magistrate ought to enquire into it and call upon the prosecution to produce evidence sufficient to satisfy him on the point. In this case the notice purported to have been issued by a member of the ward and was signed by him not on behalf of the board or on behalf of any person authorized by the board. 36 All. 227; 25. I. C. 326.

Legality of any orders, direction or requirements can be questioned in any court in which penal proceedings are brought in respect of any alleged breach for non-compliance therewith if it can be shown that it is an order, requirement or direction which the board can not make, *i.e.*, an order made outside its jurisdiction though the magistrate cannot question the reasonableness of the notice: 43 All. 644. What the prosecution has to prove under S. 219 is that a lawful direction was given to the accused by a notice lawfully issued under powers conferred by the Act and that the accused disobeyed the said direction. *Cf.* 1928 Nag. 337; 111 I. C. 113.

When an accused is served with a notice to remove an encroachment under S. 173 his failure to comply with the notice is not punishable under S. 219 as no notice need be issued and the disobedience of such a notice does not amount to disobedience of a lawful order. *Cf.* 1923 Bom. 30; 66 I. C. 817.

If a notice is not issued according to the provisions of the Act or under a rule or a bye-law the person to whom the notice is issued may disobey it and yet not be liable to punishment. Hence to sustain a conviction under S. 219 it is necessary to prove that the notice was issued under the provisions of the Act or under a rule or a bye-law. When accused person admits the issue of a notice and his disobedience thereof it does not necessarily follow that he is guilty. It is open to him to plead that the notice was issued without authority and without reason. *Cf.* 1925 Oudh 546; 88 I. C. 243.

Directions given in a notice under S. 408 of the Calcutta Municipal Act (Bengal Act, III of 1899) to the owner of property, during the pendency of litigation in respect of that property, cannot be said to be lawfully given, if it is not open to the owner at that time either individually or collectively to alter the property by carrying out the improvements mentioned in the notice. 33 Cal. 699.

Notice issued by an authority not entitled to issue such notice—Ratification.—S. 187 states that a cantonment authority may by notice in writing require the removal of an encroachment. Consequently a person cannot be convicted for disobeying a notice issued by the executive officer for removal of encroachment on Government land. Subsequent confirmation of the action of the executive officer by the cantonment board is of no avail as the notice disobeyed is the notice from the executive officer. 1933 Lah. 545.

Order by executive authority—Standing orders in matters requiring exercise of discretion.—A cantonment magistrate, being only the executive officer of the cantonment authority, has no authority, of his own initiative, to issue an order under S. 96* of the Cantonment Code.

The only authority that can require the owner of land to remove a boundary wall and rebuild it is the cantonment committee and before an order can legally be issued by that body, the members thereof must form the opinion that the wall is unsuitable, unsightly or otherwise objectionable.

A standing order of the cantonment committee, that all the walls fronting the road should be rebuilt with brick as they fell into disrepair cannot be construed as vesting in the cantonment magistrate the discretionary power of the committee to decide whether or not any particular wall was unsightly and should be removed. 1 I. C. 940.

Publication—Unless a regulation or bye-law is duly published a contravention of such a regulation is not punishable. 21 I. C. 176.

Conviction bars defence.—On his disobeying the order of a municipality to remove an objectionable *chajja* the applicant was convicted and fined Rs. 5 under a section corresponding to S. 219 of the Municipal Act. He challenged the correctness of that conviction up to the High Court but his objection was thrown out. At the second trial he wished to challenge the correctness of the first conviction by showing that the municipal committee's notice was illegal:

Held, he could not now challenge the correctness of the first conviction. 25 I. C. 323; 36 All. 430.

Subsequent sanction or permission—Where a man is prosecuted for doing a thing without sanction, the subsequent sanction does not condone previous offence. 4 C. L. J. R. 411.

* This section empowers cantonment authority to issue notices requiring removal of unsightly walls, etc.

Acquittal.—Where an accused person is acquitted for an offence for not complying with a notice under S. 172, he cannot be re-prosecuted by issue of a fresh notice. 1924 Mad. 1067; 48 Mad. 870.

Acquittal and second prosecution on fresh notice.—Where although a person having been served with a notice to remove an encroachment under S. 159,* Madras Act XIV of 1920 has been charged and acquitted in respect of the encroachment he can yet be prosecuted and convicted in respect of same encroachment after issuing to him a second notice. 1932 Mad. 535. See also 1932 Mad. 537.

Where alleged encroachment had not been found to constitute obstruction in a previous case, when the accused was acquitted, and there was no evidence of any new obstruction in excess of the encroachment then effected the acquittal was a bar to the subsequent proceedings. 63 P. L. R. 1904 See also 1925 Mad. 1067.

Acquiescence in the disobedience of notice.—A petitioner was called upon to demolish a certain building. He disobeyed the order and was convicted of disobedience. Since the order directing the demolition of the building the municipality had taken rates from the petitioner in respect of that very building : *Held*, that the acceptance of the rates did not amount to acquiescence in the disobedience of the petitioner to the order. 6 I. C. 800.

Competency of Judicial Courts to question the legality but not the reasonableness of the notice.—Although judicial courts have no jurisdiction to interfere with orders issued by municipal authorities yet in cases where criminal proceedings are taken out under S. 219 for disobedience of an order under Chapter IX and a conviction obtained it is open to the Chief Court on revision side to review the proceedings, test the legality of the notice and decide whether the conviction is good. *Cf.* P. R. 1 of 1906 Cr.; 16 Mad. 230 and 9 Cal. 38.

A notice was issued to a proprietor to construct a cess-pool for dirty water. The magistrate declined to go into the question whether the order of the committee was reasonable. There is no appeal against orders issued under S. 125, as in matters dealt with under S. 125, the sanitary authority is constituted the sole arbitrators of such matters.

It was held that, having regard to the general scheme of the Act and the policy of the law in these matters, the magistrate was clearly right unless there was some statutory provision to the contrary. It would be obviously difficult and

* *Cf.* S. 172 of the Punjab Municipal Act.

embarrassing and would cause a vast amount of discussion if every order of this kind, not merely sanitary but other orders of a public nature, made by a public authority in the administration of the general comfort and health of the community, were to be canvassed and debated in a magistrate's court in every small matter, before a tribunal which is not necessarily qualified to form an opinion, and certainly not so well qualified, as a municipal body which, if it does its work properly, ought to act upon the advice of trained and experienced employees. 43 All. 644; 1921 All. 267.

Jurisdiction of Civil Courts to restrain criminal proceedings.—Though the extreme position cannot be maintained that there is absolutely no jurisdiction in the court to restrain proceedings before a magistrate, the court will not interfere unless in very special circumstances by way of injunction or declaration of rights where the legislature has pointed out a mode of procedure before a magistrate. But it is not the practice of the court to interfere with corporate bodies unless they are manifestly abusing their powers. 50 Cal. 813; 1924 Cal. 334; 77 I. C. 529. See also 55 Cal. 978 noted under S. 173.

Daily fine.—An order inflicting a daily fine per day in future in case the offence is continued is illegal. The section requires a separate prosecution for a distinct offence, a prosecution in which a charge must be laid for specific contravention for a specific number of days and for which charge, if proved, the magistrate is to impose a daily fine not exceeding Rs. 5 per day. 22 Bom. 706; 22 Bom. 841; 1925 All. 251; 84 I. C. 439.

The order as to payment of daily fine after the date of the conviction for failure to comply with the notice is bad. The words "continuing breach" empower the magistrate to impose a daily fine from the date mentioned in the notice, issued by the committee to the date of compliance or to the date of conviction whichever may first occur. Fine cannot be imposed prospectively. The proper course is to institute further prosecution and allow the accused an opportunity of defending himself before the further fine is imposed. P. R. 13 of 1903 Cr. Cf. also 16 Mad. 230, 27 Cal. 565, 20 W. R. 64 Cr.; 21 W. R. 31 Cr.; 25 W. R. 6 Cr.; 24 All. 309; 7 C. W. N. 853; 1927 All. 131; 48 I. C. 889.

When convicting an offender under S. 219 for failure to comply with a notice the magistrate cannot in the same order direct the payment of a further fine of so much per day from the date of order until the notice was complied with.

Recurring daily fine cannot be imposed in advance. It can only be imposed by a second prosecution. 46 I. C. 150; 40 All. 569 and 1932 Nag. 116; 139 I. C. 496.

The liability to a daily fine in the event of a continuing breach has been imposed by the legislature in order that a person contumaciously disobeying an order lawfully issued by a municipal board may not claim to have purged his offence once and for all by payment of the fine imposed upon him for neglect or refusal to comply with the said order. The liability will require to be enforced, as often as the municipal board may consider necessary, by institution of a second prosecution, in which the questions for consideration will be, how many days have elapsed from the date of the first conviction under the same section during which the offender is proved to have persisted in the offence, and, secondly, the appropriate amount of the daily fine to be imposed under the circumstances of the case subject to the prescribed maximum of Rs. 5 *per diem*. 46 I. C. 150.

It is not competent to the court to impose such fine in advance whilst sentencing the offender in respect of the original breach. Order of daily fine in such a case would amount to an adjudication in respect of offence which had not been committed when the order was passed. 24 All. 309.

A court cannot sentence a person to pay a fine for a prospective offence but can only impose a daily fine for failure or disobedience which is proved to have continued for a certain period after the date of the first conviction or after the date of such notice or requisition as may be required by the enactment. The last words in S. 219 show that there should be a conviction for a previous breach and in a subsequent conviction for continuing the breach after this date of that first conviction, and therefore when there is no previous conviction, under S. 219 a magistrate cannot impose a continuing daily fine. Cf. 1926 Bom. 526; 98 I. C. 400.

A conviction was followed by the words: Failure to comply with the order will from December 1st involve a continuing fine of Rs. 2 *per diem*: Held, that if this was to be treated as an order imposing such a fine it was illegal and if it was to be treated as a warning it was unnecessary and undesirable to specify the amount which could only be decided when a second prosecution had been successful. 1926 All. 204; 88 I. C. 367.

The words 'every day' after the first must be interpreted as every day after the first to which the conviction relates. If a person has been committing a breach of a bye-

law since 8th July 1928, he can be properly fined Rs. 50 on 21st November, 1928. It is a misreading of S. 219 to think he should be fined Rs. 5 only on 21st November, because he was on that date continuing the offence. Cf. 1929 Nag. 360 (1); 122 I. C. 64.

Continuing offence.—Before a continuing fine is imposed for a continuing offence it must be alleged and proved that the accused had continued to use the premises for a specific number of days after his conviction, and that he had no license during these days. This charge must be the subject of a separate prosecution, and a separate inquiry. It is only on proof of the charge so laid that the magistrate is called upon to exercise his discretion and to determine what would be the proper amount of fine per day which the accused be made to pay and to give a finding as to the number of days for which such fine is to be levied. 1929 Sindh 50 (2); 115 I. C. 307.

There must first be a conviction for the breach, and again a subsequent conviction for continuing the breach from the date of the first conviction, before an order can be passed inflicting a daily fine. 1929 Sindh 52; 115 I. C. 308.

Allowing a building to remain undemolished after conviction for erection without permission is not a continuing offence. 1930 Bom. 340; 127 I. C. 181.

Order of demolition.—A magistrate is competent to convict and sentence an accused for constructing a building overhanging a municipal street under S. 172 (2) but he is not authorized to pass an order for demolition of the building, nor can he pass a sentence of daily fine until such time as the building should be demolished.

Where the Chief Court set aside an order of directing the demolition and fine for prospective disobedience:

Held, that the order of the Chief Court was no bar to a fresh prosecution in respect of proved initial disobedience and continuing breach of the notice. 30 I. C. 157.

Order of composition.—In a prosecution under S. 219 for failure to comply with a notice under Ss. 172 and 195 requiring to remove certain projections built without sanction, the magistrate ordered the accused to pay a penalty of Rs. 5 and ordered the projection to remain: *Held*, that the order is without jurisdiction and could not be sustained. 1923 Lah. 686; 77 I. C. 421.

Jurisdiction of magistrates to allow building to stand.—In a prosecution for failure to comply with a notice of demolition under S. 195 of the Act, the magistrate is not competent to

direct that the building should stand, the remedy of persons aggrieved by notice under S. 195 being to appeal to Commissioner under S. 225. 1927 Lah. 58; 8 Lah. 103.

Such an order of the magistrate would be *ultra vires*. 1927 Lah. 69; 99 I. C. 80.

Imprisonment.—A magistrate has jurisdiction to impose a fine and also to pronounce a sentence of imprisonment in default of the fine. 18 Mad. 490.

Court fee.—No court fee is leviable on complaints made by municipal officers and the accused are not liable to refund sums illegally levied from the complainant as court fee. 16 Mad. 423.

Amount of fine.—Where the offence is technical and the committee was not prepared in taking action nominal fine would do. 1925 All. 415; 88 I. C. 191.

Sentence of warning.—Warning and discharging the accused on his removing the nuisance complained of is not a form of sentence or order that the magistrate has power to pass in the case of an offence under S. 219; sub-section (1) (a) of S. 562, Cr. P. C., is confined to cases of offences under the Penal Code and does not apply to an offence punishable under the Municipal Act. Accused should either be punished or acquitted. 1928 Bom. 152; 52 Bom. 250.

Proviso.—See Notes under S. 214. It will be seen that some of the sections fix the time within which the notice is to be complied with. Even in such cases the work required to be done should be such as could be carried out within the time fixed. If the works could not be reasonably done within the time fixed in the section under which the notice is issued, the notice will be void.

Under S. 224 of Madras City Municipal Act a person was required to execute a work for alteration of the latrine. The section required a notice of 14 days. The committee, however, gave a notice of thirty days and on failure of the owner executed the work and applied for recoveries of costs. The committee took four months to execute the work. The application was dismissed, and it was *held* that the work contemplated by the section should be such as could be reasonably done within 14 days. The notice was *held* to be void and disobedience of it was neither an offence nor a ground of civil liability. 50 I. C. 247.

In cases where the section under which the notice is issued fixes no time, then under S. 214 the committee is bound to fix a reasonable time and when prosecution is launched for non-compliance, the magistrate will be justified in dismissing the prosecution if, in his opinion, the time fixed was not reasonable.

See Notes under various sections dealing with issue of notices.

219-A. Every person convicted of an offence under this Act on account of any act or omission, shall, notwithstanding any punishment to which he may have been sentenced for such offence, pay compensation the amount of which shall be determined by the magistrate before whom he was so convicted, to the committee for any damage that may have occurred to any property of the committee, in consequence of such act or omission.

Compensation for damage.
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Notes.

This is a new section introduced by S. 59 of the Amendment Act, II of 1923.

Analogous Law:—

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| S. 528, Bengal Municipal Act, 1932. | Act, III of 1923. |
| S. 202, Bombay Municipal Boroughs Act, 1925. | S. 395, Madras District Municipal Act, V of 1920. |
| S. 163, Bombay District Municipal Act, III of 1901. | S. 349, Madras Local Boards Act, XI of 1930. |
| S. 502, Bombay City Municipal Act, III of 1888. | S. 217, Rangoon City Municipal Act, 1922. |
| S. 521, Calcutta City Municipal | S. 316, U. P. Municipalities Act, 1916. |

Damage to property.— There are acts and omissions under some provisions of the Act which are likely to cause damage to municipal property; cf. the provisions of Ss. 129, 130, 135, 156, 173, 177 to 179. When an offender is punished under any of these sections or under any other section in which by the act or omission of the offender some property of the committee is damaged, he shall also be liable to pay compensation the amount of which will be determined by the magistrate.

220. Whenever the terms of any notice have not been complied with, the committee may, after six hours' notice by its officers, cause the act to be done.

Power of committee in event of non-compliance.

Notes.

S. 147 (3) of the old Act.

Analogous Law:—

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| S. 180, Bengal District Municipal Act, III of 1884. | S. 307, U. P. Municipalities Act, II of 1916. |
| Ss. 514 & 519, Bengal Municipal Act, XV of 1932. | S. 164, Central Provinces Act, II of 1922. |
| S. 154 (6), Bombay Act, III of 1901. | S. 356, Behar and Orissa Act, XVII of 1922. |
| S. 264, Madras Act, IV of 1884. | S. 256, Cantonment Act, II of 1924. |

Executive Officers Act.—The power conferred upon the committees under this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

Delegation.—Powers under the section can be delegated under S. 33.

Injunction.—In certain cases the orders of the committee are appealable. In case no appeal lies the remedy of the person threatened under the section is to sue for permanent injunction. The civil courts will have power of interference only in cases where the action of the committee is shown to be *ultra vires* or arbitrary. Cf. P. R. 24 of 1890 Cr. ; P. R. 90 of 1898; P. R. 52 of 1900; 12 Bom. 490 and Notes under different heads dealing with powers of municipalities.

Powers under S. 220.—It is not necessary for the committee that it should itself carry out, under S. 220, the requirements of notices issued under various sections of the Act calling upon owners to effect certain improvements: 48 I. C. 161. Where, however, the matter is urgent and the health of the neighbourhood will suffer by delay, the committee will be well advised to take action under S. 220. The following remarks of Walsh, J., in 43 All. 644 in connection with this matter should be borne in mind by committees :—“ I would merely point out to this municipality and municipalities in general that although these proceedings to impose fines are no doubt necessary in some cases and it may be even desirable sometimes to pursue an objecting owner in further proceedings for fines in respect of continuing breaches. The Act really provides a far more efficient alternative. In addition to proceedings against the owner and having fined him for original disobedience to the notice, the sanitary authority is also given the power to do the work itself or cause the work to be done and to charge the expense upon the owner. If it is a matter of health requiring notice upon the owner of criminal proceedings for breach, it must be a matter sufficiently urgent to call upon the local authority to remedy the evil in the interests of the health of the community with as little delay as possible. The erection in this case was clearly needed, but was an erection, so far as time and money were concerned, of no difficulty. The owner was required to do it in fifteen days. That probably means that either he or the municipality could have done it in two or three days. In such circumstances, instead of wrangling in a magistrate's court and going up in revision and coming to the High Court, it is clearly in the public interest that a municipality, if it has issued a reasonable notice and has the

courage of its opinion, should do the work in the interest of the community (in this case the visitors to the Jain temple) and charge and recover from the owner the few rupees which it would cost. Presumably the matter is somewhat small, but the important point is that we are in the month of May, 1921, when nothing has been done in a matter which the municipality thought ought to be done in June 1920."

Prosecution for non-compliance.—There can be no prosecution for non-compliance with notice under this section. It would be inadvisable to resort to this provision if the committee finds its officers unable to carry out the threat conveyed by notice under this section.

As long as the terms of the notice referred in the section remained uncomplied the person served remains liable for prosecution. If the work is carried out by the committee after notice under this section the default on the part of the person concerned vanishes but till the work is carried out the default remains entire or partial and the liability of the person to be prosecuted still continues in operation. Cf. 1924 Cal. 334; 50 Cal. 813.

Extent of action to be carried out.—Notice served upon a person on behalf of a municipal committee to alter an encroachment *i.e.*, *thara* on the drain, within a week so as to bring it in conformity with the sanction, failing which he would be dealt with according to law, is a notice under S. 172. All that the committee could do on the failure of the party to comply with the notice under S. 220 is to have the necessary alterations made through its own agency. The right to alter does not necessarily carry with it the right to demolish. If the immovable encroachment can be altered without demolition so as to conform with the sanction, there is no jurisdiction for the wholesale demolition.

In this case *thara* had been demolished and the court permitted the owner to re-erect the *thara* in accordance with the sanction of the committee. 1929 Lah. 566; 116 I. C. 908.

Service of notice.—Service of notice on one co-owner is sufficient when the provision makes it so. 44 I. C. 413.

Recovery of costs.—Where plaintiffs were found not to have complied with the notices sent by the municipal board to pave the yard with bricks so as to make it sanitary and thereafter the municipal board itself paved it with brick and sent a bill of costs to the plaintiff: *Held*, that the action of the municipality was perfectly legal within its powers and that no suit lies against it for this action. 1923 All. 371; 75 I. C. 607.

Penalty for
obstruction.

221. Any person wilfully obstructing the committee, or any officer or servant of the committee, or any person authorized by the committee, in the exercise of the powers conferred by this Act, shall be punishable with fine which may extend to hundred rupees.

Notes.

This section is new and was amended by S. 60 of the Punjab Amendment Act, II of 1923. The fine was increased to Rs. 100 from Rs. 50.

Analogous Law :—

S. 180, Bengal District Municipal Act, 1884.

S. 502, Bengal Municipal Act, XV of 1932.

S. 356, Behar and Orissa Municipal Act, 1922.

S. 154 (6), Bombay District Municipal Act, III of 1901.

S. 249, Cantt. Act, II of 1924.

S. 364, Madras City Municipal Act, 1919.

S. 359, Madras District Municipal Act, V of 1920.

S. 295, U. P. Municipalities Act, 1916.

English Law :—

S. 306, Public Health Act, 1875.

In the exercise of powers conferred by the Act.—Before an offence under this section like the offence under S. 186, I. P. C., can be said to be established it is requisite to prove that the municipal servant obstructed was obstructed when exercising powers conferred under the Act. That is a matter of fact and not a matter of municipal servant's intention. His intention may have been quite honest, but if in fact and in law the functions he was exercising in the discharge of which he was obstructed were not functions conferred under this Act no offence can be said to have been committed under this section.

Under S. 173 of this Act the secretary has powers to remove movable encroachments from streets but no such power is conferred in cases where the site under the encroachments is claimed as private property and prosecution under S. 173 against the shopkeeper for the said encroachment has before failed, for the section does not entitle the committee or the secretary where *bona fide* dispute exists to decide that dispute for themselves. Cf. 19 I. C. 507.

When the municipal servant is carrying out an order of the committee which is vague and indefinite, the owner cannot be convicted if he, honestly believing that the servant was exceeding the instructions, resisted the carrying out of the order. 22 I. C. 767; 5 P. L. R. 1914.

Before a man can be made liable under this section it must be shown that the municipal officer or servant was obstructed when doing something authorized under the Act. Under a corresponding provision of the U. P. Act, II of 1916,

a man was held not guilty when obstructing a contractor whose contract was given in contravention of the Act. *Cf.* 1929 All. 16; 116 I. C. 798.

Obstruction.—Resistance implies something more than disobedience and a mere intention to disobey will not suffice.

It connotes some overt act and mere words when there is no intention of carrying them into effect, will not be sufficient to prove an intention to resist, but the conduct of the mob in their refusal to disperse at the command of the police clearly constitutes overt act and establishes a common object to resist the orders within the meaning of clause (2) of S. 141, I. P. C. 1923 Pat. 1; 68 I. C. 945.

Wilful obstruction.—Wilful obstruction need not amount to actual physical violence: *Borrow v. Howland*, (1896) 60 J. P. 391; 74 L. T. 787. In *Baker v. Ellison*, (1914) 2 K. B. 762, a passenger on the top of an omnibus who refused to go inside at the conductor's request on reaching a hill which it was dangerous to descend with passengers on the top, and thereby caused the omnibus to be delayed, was held properly convicted of "obstructing" the conductor. In *Swallow v. London C. C.*, (1916) 80 J. P. 164, it was held that a refusal on the part of the person in charge of a vehicle containing coal to put the coal on the weighing machine or to assist a weights and measures officer in the weighing did not amount to "obstructing" the weighing under S. 27 (2) of the Weights and Measures Act, 1889.

A notice having been served by a council upon the owner of premises requiring him to abate a nuisance thereon, certain members of the council went to the premises, and, without the owner's permission, some of them entered the premises to make an inspection, the rest remaining outside. The owner thereupon locked the door, thus preventing the members who were outside from entering, and those who were inside from getting out. Upon an information charging him with having wilfully obstructed the members in the execution of this Act, it was held that the members had no power under S. 102,* Public Health Act, 1875 to enter premises except by permission of the owner, or by order of a magistrate, and therefore they were not lawfully there, and the owner was not guilty of obstructing them in the performance of their duty. *Consett U. D. C. v. Crawford*, (1903) 2 K. B. 183; 67 J. P. 309.

A refusal to pay a municipal charge is not an offence. An advice to a person not to pay a municipal charge to muni-

* *Cf.* S. 203 of the Punjab Act.

cipal peon does not amount to obstruction of a municipal servant in the performance of the duties. 64 I. C. 130.

Right of private defence.—Municipal inspector is a public servant — there is no right of private defence when he is acting under color of his office even if the act was not justifiable by law. 13 Mad. 131; 1 Weir 345.

Where a tenant who is liable to pay rent to a contractor of the cantonment committee who has been duly authorized to collect rent from him, refuses to pay rent either to him or to his servant, the mere refusal to pay rent does not amount to an obstruction within the purview of S. 249, Act II of 1924. Therefore a complaint founded on S. 249 is, to say the least of it, clearly misconceived and an action for malicious prosecution lies against the complainant. 1932 All. 386; 138 I. C. 282.

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tion.

222. (1) Where, under this Act, the owner or occupier of property is required by the committee to execute any work and default has been made in complying with the requirement and the committee has executed the work, the committee may recover the cost of the work from the person in default.

(2) As between themselves and the committee both owner and occupier shall be deemed to be in default for the purposes of this section, but that one of them shall be deemed to be primarily in default upon whom as between landlord and tenant, the duty of doing the required act would properly fall either in pursuance of the contract of tenancy or by law.

(3) When the person primarily in default is the owner and the committee has recovered the whole or any part of the cost from the occupier, or he has paid the same upon its demand, he may deduct the sum so recovered or paid from the rent from time to time becoming due from him to the owner, or otherwise recover it from such owner:

Provided that no occupier shall be required to pay under sub-section (3) any sum greater than the amount for the time being due from him to the owner, either in respect of rent due at the date of such demand as aforesaid or thereafter accruing unless he has refused on application to him by the committee truly to disclose the amount of his rent and the name and address of the person to whom it is payable; but the burden of proof that the sum so demanded by the committee from the occupier exceeds the rent due at the time of the demand, or which has since accrued due, shall lie on the occupier.

(4) All money recoverable by a committee under this section may be recovered either by suit or on application to a magistrate having jurisdiction within the municipality by distress and sale of the movable property of the person from

whom the money is recoverable, and if payable by the owner of the property shall, until it is paid, be a charge on the property.

(5) Nothing in this section shall affect any contract between an owner and an occupier.

(6) Where under Section 113 or Section 114, the committee has executed any work, the cost thereof may be recovered from the owner or occupier in connection with work done under Section 113 and from the owner in connection with work done under Section 114, in the manner herein provided for the recovery of the costs of work from a defaulting owner or occupier and subject to the provision herein contained.

Notes.

S. 148 of the old Act.

Analogous Law:—

Ss. 180 & 181, Bengal District Municipal Act, 1884.

S. 522, Bengal Municipal Act, XV of 1932.

Ss. 199 & 367-8, Behar and Orissa Municipal Act, 1922

S. 194, Bombay Municipal Boroughs Act, 1925.

Ss. 156 (2) & 157, Bombay District Municipal Act, III of 1901.

Ss. 490-1, Bombay City Municipal Act, III of 1888.

S. 145, Burma Municipal Act, III of 1898

Ss. 285, 510 & 518, Calcutta City Municipal Act, III of 1923.

S. 165, Central Provinces Municipal Act, II of 1922

S. 381, Madras City Municipal Act, 1919.

S. 340, Madras District Municipal Act, V of 1920.

S. 186, Rangoon City Municipal Act, 1922.

Ss. 308, 309, 311 & 312, U. P. Municipalities Act, 1916.

English Law:—

Ss. 104 & 257, Public Health Act, 1875.

Recovery of costs.—See 11 Mad. 341 and 16 W. R. 285 Cr. noted on p. 465.

Clause (4).—See Notes under Ss. 80 and 81.

Clause (6)—This has been added by the Amendment Act, II of 1923.

Owners and occupiers.—See Notes under S. 3 (10) and 3 (11).

Clause (2). Contract of tenancy.—The contracts of tenancy are generally very simple and one seldom finds any provision determining the respective liabilities of the parties as regards municipal requirements. Where, however, the lease is a formal document containing such provisions, then the primary liability will be determined by the terms of the lease. The section corresponds to S. 104 of the Public Health Act, 1875, and in England frequent disputes have arisen between landlords and their tenants as to their respective

liability for such expenses. The decisions are, however, not uniform and the following extracts from Lumley's standard work on "Public Health," 10th Ed., pp. 204-14 are quoted for guidance:—

"Owners of premises have, not unnaturally, tried to so frame covenants in leases granted by them as to cast upon the lessees the burden of whatever expenses have to be met in respect of the demised premises. In so far as such expenses represent permanent improvements of which they will not get the full benefit, tenants have, quite naturally, sought to escape payment. The result has been that a large number of cases turning upon the construction of covenants as to rates, etc., have come before the courts. The principle of law underlying the cases is the same whether the expenses are those of the nature referred to in S. 104, Public Health Act, 1875, or are expenses in connection with paving, etc., and the decision on both points are therefore collected in this note.

"Prior to the decision of the Court of Appeal in *Foulger v. Arding*, (1902) 1 K. B. 700, the authorities on the subject were in an unsatisfactory condition, and even now, although many cases decided since *Foulger v. Arding* have further cleared the air, it cannot be said that the law is clear. It will, however, probably be found that the authorities warrant the following propositions: (1) *prima facie* a covenant which merely throws 'rates, taxes and assessments' upon a tenant, imposes upon him a liability to pay only assessment of a temporary or recurring nature; (2) a covenant containing such words as 'duties,' 'outgoings,' 'impositions,' or 'charges' may impose upon a tenant a liability to pay for permanent improvements of the demised premises.

"A lease in which a tenant merely covenants to pay his 'rent without deduction' cannot be construed as a contract between landlord and tenant which will oust the statutory right of the tenant to deduct the payments referred to in the section. See *Home and Colonial Stores v. Tod*, (1891) 63 L. T. 829, decided under the similarly worded section (S. 96) of the Metropolis Management Act, 1862.

"*Cf. Sweet v. Seager* (1857) 21 J. P. 406, *Tidswell v. Whitworth* (1867) L. R. 2 C. P. 326, *Thompson v. Lapworth* (1868) 32 J. P. 184, *Crosse v. Raw* (1874) L. Q. 9 Ex. 209, *Budd and another v. Marshal* (1880) 44 J. P. 584, *Allum v. Dickenson* (1882), 9 Q. B. D. 632 and other cases.

"Many of the above cases came up for consideration by the Court of Appeal in *Foulger v. Arding*, (1902) 1 K. B. 700 where the facts were as follows:—The defendant was a

tenant to the plaintiff of a dwelling-house under a lease for sixteen years from 1891. The lease contained a covenant that the tenant would 'pay and discharge all taxes, rates including sewers, main drainage assessments and impositions whatsoever which now are or which at any time or times hereafter during the continuance of the said term hereby granted be taxed, rated, assessed, charged or imposed upon or in respect of the said premises by authority of Parliament or otherwise howsoever (landlord's property tax and tithe only excepted).' It contained no covenant to repair by either landlord or tenant. The sanitary authority required the lessor to abate a nuisance caused by a foul and offensive privy on the premises, and to remove the privy and construct a water-closet. The lessor did the work, and it was held that he was entitled to recover the expense incurred by him in so doing, such expense being covered by the words 'impositions charged or imposed upon or in respect of the said premises on the landlord, tenant or occupier of the same.' Collins, M. R., in giving judgment, said: 'The decisions on this subject remove one or two difficulties which might arise, if the construction of such a covenant as this were being considered for the first time. It is clear on the authorities that, where there is a defect inherent in the structure of the premises at the time of the demise, and which is the subject-matter of an obligation imposed by the statute on the landlord, the burden of the obligation may nevertheless, by a covenant of this kind, be thrown upon the tenant. It is also clear from the authorities that a covenant of this kind may, if it contains appropriate words, be construed as being directed, not only to recurring charges such as rates and taxes, but also to charges in the nature of capital expenditure incurred once for all, such as charges in respect of structural work. If the matter were unencumbered by authority, and could be looked at with clear eyes, regardless of the labyrinth of cases on the subject, I think that no one could doubt that an obligation, such as that in the present case, imposed upon a landlord in respect of a structural defect, which he was bound by statute to remedy, or to pay the cost of remedying, might properly be described as an imposition charged or imposed upon the landlord in respect of the premises. It seems to me that, if the matter were clear of authority, the obligation imposed on the plaintiff in this case would come within the plain meaning of the words of the covenant. The only possible answer appears to me to be that which was indicated by an observation of my brother Romer during the argument. It may be asked, if so wide a sense is to be given to the word "imposition," where is the line to be drawn? If it is to be construed as capable of covering this case, must it not be

equally capable of covering such a case as one in which demised premises were built beyond the building line of a street, and there was a consequent obligation on the landlord to pull down part of the premises and rebuild in conformity with the building line. It is said that it could not possibly be contended that such an obligation was within the meaning of the term "imposition" as used in a covenant of this kind. This argument may, as it seems to me, be met by pointing out that underlying the whole matter is the consideration that we are dealing with a contract of demise between landlord and tenant, and the covenant must be assumed to relate only to matters which may reasonably be supposed to have been contemplated by the parties as being within the purview of such a contract; and such an extreme case as that of an obligation to pull down and rebuild the premises is so far outside of anything that can possibly be conceived of as being within the contemplation of the parties that it is necessarily excluded from the meaning of words which might otherwise have been wide enough to include it.' His lordship later on said: 'I think that, apart from authority, it would be impossible to say that the word "imposition" is not large enough to cover the obligation in the present case;' and he proceeded to show that there was nothing in the authorities to debar the court from giving its natural meaning to that word, and then said: 'It seems to me also that an obligation of this kind is one of the very things that the parties would probably contemplate in entering into this covenant, as being a matter which might ordinarily arise as an incident of the relation between landlord and tenant. It is not an imposition of a class which is so far outside that relation that it could not have been contemplated by the parties.'

"According to the last mentioned decision, the course to be pursued, when construing covenants in leases, would appear to be to first determine whether the words of the covenant are *prima facie* wide enough to cover the obligation in question, and, if they are, to ascertain whether the obligation is one of a class which would reasonably be within the contemplation of the parties. The ground of the decision in *Foulger v. Arding*, *supra*, has since been frequently applied." See *Shephard v. Barber*, (1903), 67 J. P. 238.

A lessee of a house for seven years covenanted "to pay during the term the sewers rate and all other taxes, rates, charges, and assessments whatsoever, parliamentary, parochial, or otherwise, which then were or thereafter should be imposed, charged, or assessed, upon or in respect of the premises, or payable by either the owner or occupier in

respect of the same, the landlord's property tax only excepted." In compliance with a notice from the local authority the lessee repaired a defective drain which was causing a nuisance, and sought to recover from the lessor the cost of so doing. It was *held* by the Court of Appeal that the case was not distinguishable from *Foulger v. Arding*, *supra*, and that the lessee could not recover. *George v. Coates*, (1903) 88 L. T. 48.

The subject matter of a tenancy was a cottage and yard adjoining a wharf, and the rent was £20. The lease contained a covenant to pay "all rates, taxes, assessments and outgoings of every description, payable in respect of the premises during the tenancy," and the tenants covenanted to keep the demised premises in tenantable repair during the tenancy. The tenants had held the premises for over ten years: *Farwell, J.*, *held* that a supply of water to a water-closet required by the sanitary authority under the Public Health (London) Act, 1891, was, and that the paving and draining of a yard and repairs to drains required by such authority under the said Act were not, within the reasonable contemplation of the parties to the demise. *Valpy v. St. Leonard's Wharf Co., Ltd.*, (1903) 1 L. G. R. 305; 67 J. P. 402.

For discussion of the subject and for numerous other authorities on the point consult pp. 204-14 of Lumley's "Public Health," 10th Edition.

Liability under law.—In the absence of any covenant in the lease governing the respective liabilities of the landlord and occupiers, it would appear that landlord will be primarily liable for all structural alterations of the premises demised. Tenant will be primarily liable for abatement of nuisances arising from objectionable use of the premises by him.

Recovery by suit or application.—An unsatisfied judgment or process for expenses will be no bar to an action against the occupier. *Cf. Bermondsey (Vestry of) v. Ramsey*, (1871) L. R. 6 C. P. 217.

223. (1) When any person, by reason of his receiving or being entitled to receive the rent of immovable property as agent or trustee, of a person or society would, under this Act, be bound to discharge any obligation imposed by this Act on the owner of the property for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hand funds belonging to the owner sufficient for the purpose.

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agents
trustee

(2) The burden of proving the fact entitling an agent or trustee to relief under this section shall lie on him.

(3) When any agent or trustee has claimed and established his right to relief under this section, the committee may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which shall come to his hands on behalf or for the use of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

Notes.

S. 205 of the old Act.

This section has been amended by Amendment Act, II of 1923. The words "or being entitled to receive" have been added after the word "receiving" and the words "of a person or society" have been substituted for words between the words "trustee" and "would under" and the word "and" between "property" and "for" has been omitted.

See the definition of "owner" in S. 3 (11). The provision is for the protection of agents and trustees who are considered owners under that definition.

Executive Officers Act.—The power conferred upon the committees under sub-section 3 of this section shall not be exercised by committees but may be exercised by the executive officers in municipalities to which the Executive Officers Act has been extended.

S. 529, Bengal Municipal Act, XV of 1932.

Ss. 492, 499, 500, Bombay City Municipal Act, III of 1888.

S. 519, Calcutta City Municipal Act, III of 1923.

S. 258, Cantonment Act, II of 1924.

S. 166, Central Provinces Muni-

cipal Act, II of 1922.

S. 386, Madras City Municipal Act, 1919.

S. 341, Madras District Municipal Act, V of 1920.

Ss. 183, 184, Rangoon City Municipal Act, 1922.

S. 313, U. P. Municipalities Act, 1916.

Payment of compensation by the committee.

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224. (1) The committee may make compensation out of the municipal fund to any person sustaining any damage by reason of the exercise of any of the powers vested in the committee, its officers and servants under this Act, and shall make such compensation where the damage was caused by the negligence of the committee, its officers or servants and the person sustaining the damage was not himself in default in the matter in respect of which the power was exercised.

(2) Should any dispute, (for the settlement of which no express provision is made by any other section), arise touching the amount of any compensation which the committee is by this Act required to pay (or empowered to receive) for injury to or in respect of any building or land, it shall be settled in such manner as the parties may agree, or, in default of agreement, in the manner provided by the Land Acquisition Act, 1894, with reference to the acquisition of and payment of compensation for land for public purposes so far as it can be made applicable.

Notes.

S. 149 of the old Act.

Analogous Law:—

Ss. 185 & 362, Bengal District Municipal Act, 1884.

S. 379, Behar and Orissa Municipal Act, 1922.

Ss. 198 & 204 (3), Bombay Municipal Boroughs Act, 1925.

S. 160, Bombay District Municipal Act, III of 1901

S. 501, Bombay City Municipal Act, III of 1888.

S. 146, Burma Municipal Act, III of 1898.

S 520, Calcutta City Municipal Act, III of 1923.

S 260, Cantonment Act, II of 1924.

Ss 64 & 65, Central Provinces Municipal Act, II of 1922.

S. 343, Madras District Municipal Act, V of 1920.

Ss. 189 & 192, Rangoon City Municipal Act, 1922.

Ss. 125, 224 (2), & 323 U. P. Municipalities Act, 1916.

English Law:—

S 308, Public Health Act, 1875.

Recent changes.—S. 84, Punjab Amendment Act, III of 1933 has substituted sub-section 2 for the old sub-section. By this substitution the words in brackets have been added.

Express provision—there appears to be none.

Receipt of compensation by committee. - *Vide* S.174.

The section had been amended by Act, II of 1923, by the addition of words "or in respect of" before "any building or land" in sub-section (2). The select committee's explanation for the amendment was that it will make S. 224 (2) cover compensation payable under S. 133 which it does not now do.

Compensation under specific sections.—Sections 120 (1), 131, 132, 133, 145 (c), 172 (2), 174, 175 & 196 specifically provide for payment of compensation in certain cases where the exercise of powers under the Act results in damages.

Application of the section to acts not under municipal Act.—In a suit by a lessee of municipal land against a contractor for damages for use of land for stacking materials for repairs of roads it was *held* that S. 224 was inapplicable. The suit did not relate to an act done by the committee or any member or officer of the committee. Nor is it an act for which compensation is payable under the Act. 43 All, 614.

Damages discretionary and obligatory.—This section provides generally for other cases where in the exercise of the powers granted by the Act damage has been caused to any person, the damage may have been a necessary or natural consequence of the exercise of those powers or it may have been accidental. It may be such as would entitle him to bring a suit after notice under S. 49. The first part of the section gives the committees a discretion and enable them to settle matters amicably and pay compensation. Where, however, the damage is due to the negligence of the committee or its employees the committee is bound to pay the damage. It is not the intention of the legislature that the section should apply to every case of damage even where there is no improper exercise or breach of statutory powers. In 17 Cal. 329 the court awarded damages for refusal to grant license for a market. The court found that the refusal was justified and that the committee acted legally and in proper exercise of its powers, and also found that the plaintiffs had suffered loss in consequence of the refusal of the license and found that the refusal was an act done in the exercise of powers conferred by the Act within a section corresponding to S. 224 of the Punjab Act. The High Court set aside the order as to damages and observed: "We must be satisfied that it was the duty of the municipality under the provisions of the Act to issue the licence which they refused; for breach of such a duty they might be perhaps liable to damages."

No liability for non-exercise of powers.—The section only enables payment of compensation when damage has resulted from the exercise of powers but no liability will attach if the committee refuse or fail to exercise powers given to them by legislature.

Discretionary and legislative powers.—A municipal corporation is not impliedly liable to an action for damages either for the non-exercise of, or for the manner in which in good faith it exercises, discretionary powers of a public or legislative character. Thus, where such a corporation has under its charter a discretion as to the time and manner or plan of making public or corporate improvements, as, for example, grading streets, constructing sewers, drains, vaults, etc., building market-houses, improving its harbour, and the like, neither *mandamus* nor a private action will lie against the corporation for omitting or neglecting to act; and the reason is that such powers are conferred to be exercised or not, as the public interest is deemed to require, and there is no implied liability for deciding either that the public interest does not require action, or that it requires action

in a particular way. There may be, however, as elsewhere shown, an implied liability for the negligent or unskilful manner in which strictly corporate or municipal powers, as distinguished from public powers, are carried into execution, although there was no perfect or absolute duty resting on the corporation to enter upon the works or undertakings involving the exercise of such powers. But the liability in such cases attaches only when the duties cease to be judicial in their nature, and become ministerial. This is the principle; its application, as will be hereafter seen, is oftentimes extremely difficult. Dillon, p. 2838.

Damage.—The word “damage” is defined by Wharton to be “a loss or injury by the fault of another, *e. g.*, by an unlawful act, or omission; any hurt or hinderance that a person receives in his estate; also the compensation to be fixed by the jury when they find a verdict for the plaintiff.”

By S. 6 of Railway Consolidation Act, 1845, it is provided that the company shall make full compensation for all damages sustained by reason of the exercise, in regard to matters specified, of the powers vested in the company. In *Ricket v. Metropolitan Ry. Co.*, (1867) L. R. 2 H. L. 175 it was held “that no case comes within the statute unless when some damage has been occasioned, in respect of which but for the statute, the complaining party might have maintained an action. Any other construction would open the door to claims of so wide and indefinite a character as could not have been in contemplation of the legislature.” Similarly the present section would apply to cases where in consequence of the statutory powers not having been properly exercised or having been exceeded, an action would lie, and also to cases where damage has been occasioned by the proper exercise of statutory powers, for which an action would lie save for their existence. (Madan Gopal.)

What sort of damage included.—The language of the text is perfectly general, and appears to include almost every kind of loss caused by the action of the authority, though it only applies to such damage as the Act is required to excuse or justify. See *Broadbent v. Imperial Gas Co.*, (1857) 26 L. J. Ch. 276; 3 Jur. (N. S.) 221; *Southampton and Itchin Floating Bridge Co. v. Southampton L. B.* (1858) 8 El. and Bl. 801, 27 L. J. Q. B. 128. Acts which give parties injured a right of compensation must be taken to mean that while they take away from the owners of property the right to bring actions, they provide that parties injured by the exercise of those powers shall not be damnified by being deprived of their right of action; and, correlatively, that such persons shall have no right of compensation unless the

injury which they have sustained by the exercise of the powers is such as would, but for the provisions of the Acts, have been actionable : per Cockburn, C. J., in *New River Co. v. Johnson*, (1860), 29 L. J. M. C. 93; 24 J. P. 244. And it was held by the House of Lords that unless an injury occasioned by the act of a public company would have been the subject of a claim for damages before the company obtained statutory power to do that which occasioned the injury, it could not, unless it were expressly so provided, be a subject for compensation when occasioned by something done in the exercise of those powers. *Ricket v. Metropolitan Rail Co.*, (1867) L. R. 2 H. L. 175; 31 J. P. 484.

This principle was further illustrated in *Hall v. Bristol (Mayor of)* (1867) L. R. 2 C. P. 322; 31 J. P. 376, an action on an award of compensation for damages caused by the making of a sewer. Blackburn, J., left it to the jury to say whether the making of the sewer caused the plaintiff's land to give way independently of the weight put upon it during the last twenty years, and told them that if they thought the damage would not have been caused unless the extra weight had been put upon it, they ought to find for the defendants. It was held that the direction was right, for compensation could not be claimed for any damage which would not have been actionable if the local board had not been acting under statutory authority; and see *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402. Again, in *Cessford v. Dover Harbour Board*, (1898) *Times*, April 2nd, Wills, J., said that it was settled law that to bring a case within the doctrine of compensation as distinguished from action, three things must concur : (1) the act must be a lawful exercise of statutory powers; (2) the damages must be such as would be actionable but for the Act of Parliament; and (3) the damages must arise from the execution of the works, and not merely from the use of them after they had been constructed.

Where persons exercising statutory powers do so negligently or unreasonably, and thereby cause damage, an aggrieved person's remedy is by action, and not by a claim for compensation. But, *semble*, in order to defeat a claim for compensation the *onus* of proving negligence is on the undertakers. A public body was empowered to carry out certain works by a statute, which also provided for the payment of compensation to any person sustaining damage by reason or in consequence of the exercise of such power. The public body, in answer to a claim for compensation, pleaded that the damage was due to its contractor's negligence, and

that, therefore, a claim for compensation was not the proper remedy. It was *held* that the *onus* was on the public body to prove such negligence. *St. James's and Pall Mall Electric Light Co. v. R.*, (1904) 73 L. J. K. B. 518; 68 J. P. 288.

Absence of default — Where meat belonging to a plaintiff was seized and condemned under Ss. 116 and 117, Public Health Act and it was found that some of it was in fact unsound, though the plaintiff was unaware of such unsoundness, and could not have discovered it by any reasonable examination, it was *held* that he was nevertheless "in default," and therefore not entitled to compensation: *Hobbs v. Winchester Corporation*, (1910) 2 K. B. 471; 74 J. P. 413. Apparently, too, the words would apply to cases where, owing to the default of an owner of a house or land, the authorities are compelled to interfere with his property. But where work was done in excess of that required by a notice under a section in a local Act (corresponding to S. 36 of the Public Health Act), it was *held* that the owner was not "in default" so as to preclude him from obtaining compensation under the section corresponding to S. 308, Public Health Act, 1875. *Place v. Rawtenstall Corporation*, (1916) 81 J. P. 433; 14 L. G. R. 901.

Where a private Act provided that all houses for slaughtering horses within a certain distance of a workhouse should be deemed public nuisance and removed, provided, however, that if they existed before the Act the owners were to be entitled to compensation, it was *held* that a defendant might be indicted at common law if his house was so conducted as to be a public nuisance apart from the Act, and that in such case he would not be entitled to any compensation. *R. v. Watts*, (1826) 2 C. and P. 486.

Liability for negligence of servants. — Plaintiff's unmarried daughter, a child of about five years fell into an open manhole of a sewer in a lane in Bombay and died. The sewer was vested in the Municipality of Bombay and was under the control of the municipal commissioners. When such manholes are opened it is the duty of the municipal commissioners under S. 321 of the Act to have them properly fenced and guarded.

On the day of the accident the manhole had been opened for the purpose of inserting a flushing door in the sewer. The hole was at first properly fenced. Soon after 4.30 p. m. the superintendent in charge of the work gave orders to cease work and close the manhole for the night. The accident took place immediately afterwards. The judge found on the evidence that the child fell into the open hole in the interval that elapsed between the taking down of the fence

and putting the cover on the hole. The child was seen running and playing about the street during the afternoon. What she was doing the instant before she fell there was nothing to show:

Held, that the defendants were guilty of negligence, and that they were liable for the negligence of their servants although the latter acted contrary to the express orders given by their superiors. The committee was *held* liable in spite of contributory negligence of the mother as the committee could have avoided the mischief by exercise of ordinary care and caution. 16 Bom. 254.

The principle that a person cannot be held to answer for damages caused by carrying out an operation authorized under statutory powers, if the statutory conditions are fulfilled, only applies if the authorized operation is conducted without negligence. 1932 P. C. 275.

Corporation liable for negligence of contractor.—Though a person employing a contractor to do a lawful act is not responsible for the negligence or misconduct of the contractor or his servants in executing that act, yet if the act itself is wrongful—as, for example, the breaking up of streets, without parliamentary authority, for the purpose of laying or repairing gas or water pipes the employer is responsible for the wrong so done by the contractor or his servants, and is liable to third persons who sustain damage from the doing of that wrong: *Ellis v. Sheffield Gas Consumers Co.*, (1853), 2 E. and B. 767. When a person employs a contractor to do work in a place where the public are in the habit of passing, which work will, unless precautions are taken, cause danger to the public, an obligation is thrown upon the person who orders the work to be done to see that the necessary precautions are taken; and if the necessary precautions are not taken, he cannot escape liability by seeking to throw the blame on the contractor; and no sound distinction in this respect can be drawn between the case of a public highway and a road which may be, and to the knowledge of the wrong-doer probably will in fact be, used by persons lawfully entitled so to do. per Bruce, J., in *Penny v. Wimbledon U. D. C.*, (1898) 2 Q. B. 212, affirmed in Court of Appeal, (1899) 2 Q. B. 72. A merely casual or collateral act of negligence such as the negligent leaving of a pickaxe or the like in the road by a workman employed on the work, would be excepted from the above principle. See per A. L. Smith, L. J. (1899) 2 Q. B. at p. 76. The following other cases illustrate the rule that notwithstanding the employment of a contractor, a duty may remain on a company or local authority employing him, towards the members of

public, to prevent any damage arising from the execution of the work of the undertakers: *Pickard v. Smith* (1861), 10 C. B. (N. S.) 470; *Black v. Christchurch Finance Co.*, (1894) A. C. 48; *Hill v. Tottenham U. D. C.* (1898), 79 L. T. 495, and *Maxwell v. British Thompson Houston Co., Ltd.*, (1902) 18 T. L. R. 278. The defendants, a telephone company, were lawfully engaged in laying telephone wires along a street. They passed the wires through tubes which they laid in a trench under the level of the pavement. The defendants contracted with a plumber to connect these tubes at the joints with lead and solder to the satisfaction of the defendants' foreman, at the sum of 12s. per joint. There was evidence that the work was done by the plumber under the supervision of the defendants' foreman and that one of their men was assisting him in it. In order to make the connections between the tubes, it was necessary to obtain a flare from a benzoline lamp, which could not be done without the application of heat to the lamp. The lamp used for the purpose was provided with a safety-valve. The plumber, for the purpose of obtaining the necessary flare, dipped the lamp into a cauldron of melted solder, which was placed over a fire on the footway for the purpose of the work, which was unprotected by any screen or tent. Dipping the lamp into the solder would have been a proper and useful mode of obtaining the flare, provided the lamp had been in good order. The safety-valve of the lamp not being in working order, as the plumber ought to have known, the lamp exploded, with the result that the plaintiff who was passing on the highway was splashed by the molten solder, and thereby injured. In an action by him against the defendants in the City of London Court for damages in respect of the injuries so occasioned to him the deputy judge held that the plumber was not doing the work as an independent contractor, but under the defendants' supervision and control, and that the defendants were responsible for his negligence as above-mentioned:

Held (reversing the judgment of a Divisional Court), that the judgment of the deputy judge was right on the grounds,—first, that there was evidence that the defendants and the plumber were jointly engaged in the performance of the work under such circumstances as to render the defendants liable for the negligence of which the plumber had been guilty; and, secondly, that, even if the plumber were an independent contractor, the defendants, having authorized the performance upon a highway of work, which from its nature was likely to involve danger to persons using the highway, were bound to take care that those who executed the work

for them did not negligently cause injury to such persons. *Holliday v. National Telephone Co.*, (1899) 2 Q. B. 392.

Workmen employed by a gas company engaged in carrying out repairs to a gas main placed a fire pail upon an unfenced forecourt of a house adjoining the footway to which the public had access. On the fire they placed a ladle containing molten lead. A boy passing by accidentally knocked over the pail and the lead was spilled over the foot of the plaintiff, a child who was standing near, and injured her:

Held, that the defendants were liable on the ground that the fire pail was a nuisance because it was dangerous unless steps were taken to protect persons using the highway: *held*, further, that they were also liable on the ground of negligence. *Crane v. South Suburban Gas Co.*, (1916) 1 K. B. 33. Michael and Will's "Law Relating to Water," pp. 184-5.

Liability of the corporation for acts of servants.—Where the secretary of a municipality acting under orders of the chairman procured the issue of a warrant of distraint for a sum exceeding what was due from the person against whom the warrant was obtained and proceeded to seize and sell the goods of such person, it was *held* that the municipality was liable for the acts of the secretary whether or not there had been any resolution of the committee directing the secretary to obtain a warrant of distraint for the particular sum for which the warrant was issued.

The warrant was obtained by the secretary in the ordinary course of his employment acting in the interests of the board who adopted the act of the secretary and received the amount realized from sale.

The board was *held* responsible on the principle that the principal is civilly liable for every intentional wrong committed by an agent in the ordinary course of his employment and for the benefit of the principal even though the principal did not authorize it and even if he had expressly forbidden it. 26 All. 482.

Corporations can be held liable for the negligent act of their servants in the course of their employment. 38 I. C. 773.

Damage caused by bursting of pipes.—Where the leakage from a municipal water pipe cracks a house, and the cause of the bursting of the pipe is beyond the control of the committee, the committee will not be held to have been negligent in respect of the actual breaking of the pipe.

It is the duty of the committee to employ servants who can be trusted to exercise due skill and care in cases where injury is caused to private property.

If the damage to a house is chiefly the result of negligence on the part of the servants of the committee in failing to take proper action when damage is brought to its notice, the committee will be responsible. 18 I. C. 816; 83 P. R. 1913.

For further notes *see* S. 96.

Liability for negligence of an independent contractor.—In^{*} the case of statutory bodies entrusted with the performance of public duties, their liability cannot be shifted to a contractor employed by them for a particular purpose. They may bargain with the contractor that he shall perform the duty and stipulate for an indemnity from him if it is not performed. But they are not thereby themselves relieved from liability to those injured by the failure to perform it.

Plaintiff sued the Municipal Council of Vizagapatam for injuries sustained by him by falling on a heap of gravel thrown on to the side of a road and allowed to project nine feet into the roadway in the course of some repairs which were entrusted to a contractor:

Held, that the municipal council was liable in damages for negligence. 44 I. C. 308; 41 Mad. 538.

Negligence of a contractor or their servant.—The municipality employed a contractor to lay pipes. The contractor dug a trench eight feet deep along the whole length of a gully separating plaintiff's house from another house. The plaintiff complained that the work was done so negligently that his whole house was injured and became in such a dangerous condition that it had to be pulled down. To the plaintiff's suit for damages the municipality pleaded that the work was not done by his servants or agents but by a contractor:

Held, that the municipality was liable for the act of its contractor. The work was necessarily attended with risk and the defendant could not free himself from liability by employing a contractor. The municipality as well as the contractor were liable to the plaintiff. 17 Bom. 307.

Contractors carrying out any work for the corporation undertaking to take proper precautions to safeguard the public by proper lighting and watching are not liable to the person sustaining any damage for failure to carry out the terms of the contract. The corporation is not relieved of their liability by the agreement between itself and the contractors. There is no privity of contract between the contractors and the person sustaining damages nor is there any duty from the contractors to the person suffering the damage. 38 I. C. 773.

In a suit brought by the plaintiff for damages for injuries sustained by him by the breaking of a pulley used in a street for lifting heavy water pipes owing to the negligence of the servants of the contractor employed by a municipal corporation:

Held, that when the injurious agency which caused the accident was an inanimate object under the entire control and management of the defendants and used on a highway not closed to traffic in executing work which is found dangerous and the accident is such as would not happen in the ordinary course of things if those who had the management used proper care, the onus lies on the defendants to show that all reasonable precautions were taken and proper care used;

Held also, that the mere fact that the City Municipal Act cast on the corporation the duty of supplying pure drinking water would not take the case out of the ordinary rule above stated or the provisions of S. 106 of the Indian Evidence Act;

Held also, that the corporation cannot escape liability simply by getting the work done through a contractor.
1 L. S. G. G. 30.

Negligence and misfeasance — Municipal councils in Madras are statutory bodies with very circumscribed powers and are not self-governing in the sense that municipal corporations in England are. Though they are not a department of Government, their powers are derived from the Government and they are controlled by the provisions of the District Municipalities Act.

Municipalities in India do not act in the exercise of sovereign powers or as agents of the State in laying or maintaining roads.

Municipal corporations in India are liable for acts of misfeasance.

It is the duty of municipalities to lay and maintain roads so that the public may pass over them safely and they are liable for injuries resulting to the public through the negligent or improper performance of that duty.

The liability of statutory bodies for negligence is not based on whether a profit is derived by the levy of a cess or toll from the public. The question whether it gives them an income over expenditure is not a criterion for enforcing liability.

The public have a right to use the full breadth of a public road and any obstruction to such use amounts to misfeasance. 44 I. C. 308.

Plaintiff sued to recover damages from the Surat Municipality on account of injury done by storm water to certain garden land of his, alleging that it was owing to the negligence of the municipality that the water first broke into his garden and having broken in, it did not drain off. He based his claim mainly on the item of negligence of the defendant corporation in that it had, instead of preserving the plaintiff mentioned ditch in its original condition, filled up the greater portion of it with the rubbish of the town and the rush of water complained of was owing to the defendant having filled up the ditch as above and the consequent incapacity of the ditch to contain rain water:

Held, that the respondent municipality by constructing the dam in a creek, and by not keeping the ditch properly clean but by allowing it to fill with silt and permitting the dam to be choked with weeds and sedges, turned their works by their negligence into a nuisance so as to throw the water collected on their property—the said creek—into appellant's land and that was a clear act of misfeasance on the part of the municipality rendering them liable in damages to the plaintiff. 33 Bom. 393.

A highway which was vested in the Bradford Corporation and over which very heavy traffic passed was at a certain point very narrow. The corporation under powers conferred upon them by a local Act determined to widen the highway by setting back the kerbstone and throwing the causeway into the road. On the edge of the causeway nearest the road there was a telegraph pole which it was necessary to remove, and the corporation wrote to the Post Office authorities asking them to set back the pole to the improved street line.

The Post Office accordingly had the pole removed and the hole filled in. Shortly afterwards the corporation threw the road open for traffic. A few days after a steam wagon belonging to the plaintiff was passing along the highway when one of its wheels sank into the hole and the wagon was considerably damaged. In an action brought by the plaintiff against the corporation and the Post Office authorities to recover damages for injury to his wagon caused by the negligence of the defendants:

Held, that the defendants were liable—the corporation upon the ground that they were altering the character of part of an old road (*i. e.*, in effect making a new road), and their duty was to so make it that when they threw it open for public use it should be reasonably safe for the purposes for which it was intended to be used; the Post Office author-

ities upon the ground that having done, perhaps voluntarily, a piece of work, they did it negligently. *Thompson v. Bradford Corporation and Tinesly*, (1915) 3 K. B. 13; 1 L. S. G. G. 77.

The defendants, an urban authority, acting under the provisions of S. 43 of the Public Health Acts (Amendment Act), 1890, planted trees in certain of their highways, and surrounded each tree with an iron spiked guard. Subsequently to the erection of the guards an order was promulgated by the chief constable, acting under the defence of the Realm Regulations, by which all street lights in the defendants' area were ordered to be extinguished at a certain hour. The plaintiff, who was crossing a road at night in the darkness, came into contact with one of the guards and suffered very serious injury. In an action to recover damages for negligence, the jury found that the guard was dangerous in the circumstances of the darkness that existed, and that the defendants had not taken reasonable measures to neutralize the danger; the judge entered judgment for the plaintiff:

Held, that after the promulgation of the lighting order there was continuing duty on the defendants to take reasonable measures to prevent the guard from being a danger to the public lawfully using the road, and that the plaintiff was entitled to maintain his action. *Morrison v. Mayor, etc., of Sheffield*, (1917) 2 K. B. 866; 4 L. S.-G. G. 33.

Liability of corporation for neglecting to take measures to prevent injury—*See* 23 Mad. 389; 9 Mad. L. J. 270.

Negligence in construction of Railway.—The defendants, by the negligent construction of a railway made in exercise of their powers under the Indian Railways Act (IX of 1890), caused the plaintiff's land to be flooded in the rainy season and consequently damaged. That Act provides that a suit shall not lie to recover compensation for damage caused by the exercise of the powers thereby conferred, but that the amount of such compensation shall be determined in accordance with the Land Acquisition Act, 1870:

Held, it being shown that the defendants had exceeded or abused their statutory powers, that the plaintiff's remedy was by suit for damages, and not for compensation under the Act.

Statutory powers under such an Act are to be exercised with ordinary care and skill and with some regard to the property and rights of others; they are granted on the condition, sometimes expressed and sometimes understood—

expressed in the Railways Act of 1890, but if not expressed always understood—that the undertakers “shall do as little damages as possible in the exercise of their statutory powers.” 27 B. 344 P. C.

Negligence—Burden of proof.—*Held* (1) that the burden of proof lay on the plaintiffs and if neglect in execution of their statutory powers and duties was not brought home to the municipality a suit against them must fail as being unsustainable in law, however great the damage the plaintiffs might have suffered from the extraordinary flooding uncontrolled by the old tank dam. 12 I. C. 884; 35 Bom. 492.

Liability for negligence in respect of lighting—Where trustees of a public road were empowered to place lamps along the road, but failed to do so, it was *held* that they were not liable in an action to a person injured by reason of the road not being lighted: *Harris v. Baker*, (1815) 4 M. & S. 27. In a case where a brougham ran against a lamp post at a dangerous point, the court *held* that the failure to light the lamp was not negligence, there being no statutory obligation to do so. *Mellor v. Heywood (Mayor etc., of)*, (1884) 48 J. P. 148.

Harris v. Baker was followed in *Cowley v. Newmarket L. B.*, (1892) C. A. 345; 56 J. P. 805. By the Metropolis Management Act, 1855, S. 130, the lighting authority have a discretion as to the time during which public street lamps shall continue lighted, and when they have *bona fide* exercised their discretion in that respect they are not liable on the ground of either non-feasance or misfeasance for any accident caused through the lights having been turned out at the hour ordered: *Young v. St. Mary, Islington (Vestry of)*, (1896) 60 J. P. 821. On the other hand, where the defendants who were both the highway and the lighting authority, had erected a post in the centre of a footpath at its entrance to prevent cattle straying upon it, and had placed a lamp near the post, which they were in the habit of lighting at night, and the plaintiff, passing along the footpath at night, when the lamp was not lighted, came against the post and was injured, it was *held* that the defendants were liable: *Lamley v. East Retford (Mayor etc., of)* (1891) 55 J. P. 133. In *Sheppard v. Glossop Corporation*, (1921) 3 K. B. 132; 85 J. P. 205, a lamp which had been placed on a retaining wall was extinguished every night. The plaintiff whilst the light was extinguished missed his way without negligence, strayed on to private land and fell over the retaining wall into the street and was injured. It was *held* in an action for negligence against the authority that S. 161, Public Health Act, 1875, imposes no obligation on a local authority to light the streets

in their district, that the defendants, although they had begun, were not bound to continue the lighting of the street and that not having done anything to make the street dangerous they were not bound to give warning of danger.

Non-feasance.—Plaintiff, an inhabitant of Ahmedabad, having brought a suit against the Ahmedabad Municipality to recover damages sustained by him in respect of an injury caused to his horse and carriage in consequence of the neglect of the municipality to repair a road:

Held that as the default leading to the damage was a mere non-feasance, the suit must fail, for the statute does not impose upon the municipality a duty towards the plaintiff which they negligently failed to perform. 28 Bom. 340.

The exemption from liability of local bodies on the ground of non-feasance is confined to neglect of highways and does not apply to drainage works carried out by local bodies for their convenience which they are bound to maintain in a proper state of repair so that they shall not be a nuisance to the neighbours.

A drainage channel was built solely for the convenience of a municipality who took it over. The drainage water owing to same default instead of flowing along the assigned channel, flowed across the road into plaintiff's fields and caused damage to him. The damage was found due to the neglect of the channel. The municipality was *held* liable for damages. 21 I. C. 847; 38 Bom 116.

Actionable nuisance—Causing nuisance by opening burial ground.—It cannot be laid down as a legal proposition or doctrine that anything which, under any circumstances, lessens the comfort or endangers the safety or health of a neighbour must necessarily be an actionable nuisance. In determining whether the use of certain land acquired by a municipal council as a burning ground for the people amounts to an actionable nuisance, the courts are bound to take into consideration the fact that the object of the burning ground is to provide a convenient and sanitary means of disposing of corpses in accordance with the general sentiment of the community: so the use of a place dedicated for the communal purpose of cremation in a way which is neither negligent nor unreasonable, and, which is not calculated to aggravate the inconveniences necessarily incident to such an act as it is generally performed in the country does not amount to an actionable nuisance.

Where the municipal commissioners for the City of Madras acquired certain land and opened a burial ground and burning ground thereon and an actionable nuisance was

caused to an adjacent landowner, *held* that the municipal commissioners were protected by S. 392 of the City of Madras Municipal Act; the legislature in enacting S. 392 of the Act clearly contemplated and authorized some interference with private right of property. 25 Mad. 113.

No action of damages will lie against a public body for mere non-feasance in the absence of proof of negligence or carelessness in the discharge of their duties.

If, however, the acts done by a public body are only permissive, the private rights of parties must be respected and such body is liable in damages for injuries caused to private individuals.

In an action for an injunction against taluk board directing it to lop off the branches of certain trees which spread over the plaintiff's land:

Held, that the action could not be maintained (1) as the taluk board was under an obligatory duty to plant and preserve trees on the sides of public roads, (2) as no carelessness or negligence in the discharge of its duties was proved, and (3) the omission to remove the branches only amounted to a non-feasance for which no action lay at the instance of a private individual. 50 I. C. 803, 42 Mad. 331.

Exercise of powers conferred by legislature—Location of refuse carts.—The provision of refuse carts is essential for cleansing public streets. It is therefore an obligatory duty necessarily deducible from the obligatory duty of cleansing public streets laid upon the municipality by S. 52 (a) of the Act.

No action will lie in respect of the exercise with judgment and caution of powers conferred by the legislature. *Cf.* 8 I. C. 208.

See, however, case reported in 59 I. C. 823 noted under S. 52, p. 259, *supra*.

The duty imposed on district boards by S. 95 of Madras Act, IV of 1884, to construct and maintain roads casts on them by necessary implication the duty of constructing and maintaining the necessary culverts and tunnels under them. This implied power to construct and maintain such culverts and tunnels is not merely permissive to be exercised only when no injury will be caused to others thereby but an imperative duty cast on board by the Act.

No suit for injunction or damages will lie against the district board for any injury caused by the construction or improvement of such works, when such works or im-

provements are necessary in the interests of the public for the maintenance of the road and there is no negligence in the carrying out of the work. 31 Mad. 117.

See on the same subject P. R. 106 of 1888; P. R. 103 of 1892 noted at p. 258.

Remedy under Section 224 not enforceable in certain cases.—If a body of persons having statutory authority for the construction of works exceeds or abuses the powers conferred by the legislature, the remedy of a person injured in consequence is by action or suit and not by a proceeding for compensation under the statute which has been so transgressed. 27 Bom. 344 P. C.; 30 I. A. 60.

The general rule as to the liability of local bodies having statutory powers in respect of damage caused by their operations, is thus summarised:—

“Where water is diverted or regulated for public purposes under an Act of Parliament, as by conservators of a river, a water works or canal company, the authorities managing the water are not liable to an action for its escape, though caused by them, unless they exceed their powers, or are negligent in the execution of them, though the party injured may be entitled to compensation if the act so provides.” (Gale on “Easement,” 6th Edition, at p. 415.) As observed by Lord Macnaughten in the *Gaekwar’s Case*, “It has been determined over and over again that if a person or a body of persons having statutory authority for the construction of works (whether those works were for the benefit of the public or for the benefit of the undertakers and partly for the good of the public) exceeded or abused the powers conferred by the legislature, the remedy of a person injured in consequence, was by action or suit and not by a proceeding for compensation under the statute which had been so transgressed. Powers of that sort were to be exercised with ordinary care and skill and with some regard to the property and rights of others. They were granted on the condition sometimes expressed—expressed in the Railways Act of 1890, but if not expressed, always understood that the undertakers shall do as little damage as possible in the exercise of their statutory powers.” Where the local authority or the body exercising statutory powers is under no obligation to prevent damage accruing the person suffering damage can only apply for compensation under the Act, if any provision is made therein. On the other hand, if the damage is caused by the works and by the negligence of the body exercising statutory powers, a suit always lies. The leading case on this subject is *Geddis v. Proprietors of Bann*

Reservoir, where all the authorities are collected and fully discussed. This case establishes the further principle that if by a reasonable exercise of the powers either given by statute to the promoters or which they have at common law, the damage could be prevented, it is, within this rule 'negligence' not to make such reasonable exercise of their powers. In all these cases, negligence is the gist of the action; and a right of action for an injury not occasioned wilfully, nor by any act necessarily causing it, but arising from the user of the work, must be founded on negligence. 27 Bom. 344 P. C.

Appeal or revision.—Any decision under this section is not a decree and will not be open to appeal as no such right is specifically given by the section.

Where a statute creates a right not existing at common law and prescribes a particular remedy for its enforcement then that remedy alone must be followed. 12 I. C. 540; 36 Bom. 47.

225. (1) Any person aggrieved —

- (a) by the refusal of a committee under Section 193 to sanction the erection or re-erection of a building, or
- (b) by a notice from a committee under Section 171 requiring a street to be drained, levelled, paved, flagged, metalled or provided with proper means of lighting, or declaring a street to be a public street or by a notice from the executive officer, under Section 195 requiring the alteration or demolition of a building, or
- (c) by any order made by a committee or an executive officer under the powers conferred upon it/them by Sections 107, 116, 121, 123, or 124,

Appeal
from order
of committee

may appeal within thirty days from the date of such prohibition, notice or order to such officer as the local Government may appoint for the purpose of hearing such appeals or any of them, or, failing such appointment, to the Commissioner in the case of a committee of a first class municipality, or to the Deputy Commissioner in the case of a committee of a second class municipality; and no such refusal, notice or order shall be liable to be called in question otherwise than by such appeal:

Provided that, if, in the latter case the Deputy Commissioner or such other officer as aforesaid be himself a member of the committee, the appeal shall lie to the Commissioner.

(2) The appellate authority may, if it shall think fit, extend the period allowed by sub-section (1) for appeal.

(3) The order of the appellate authority confirming, setting aside or modifying the refusal, notice or order appealed from shall be final:

Provided that the refusal, notice or order shall not be modified or set aside until the appellant and the committee have had reasonable opportunity of being heard.

Notes.

S. 150 of the old Act. Orders under S. 171 newly introduced are made appealable.

The section has been amended by Act II of 1923. Orders under Ss. 121 and 124 have also been made appealable. Under S. 85, clause (b) of sub-section (1) has been substituted for the original clause. The word "street" has been used for the words "way, road, lane, square court, alley, passage or open space." The definition of "street" covers all these words which have been deleted as unnecessary.

Analogous Law:—

Ss. 212-A, 256-B, Bengal District Municipal Act, 1884.
Ss. 440, 530-3, Bengal Municipal Act, XV of 1932.
Ss. 253 & 373, Behar and Orissa Municipal Act, 1922.
S. 36, Bombay District Municipal Act, III of 1901.
S. 147, Burma Municipal Act,

III of 1898.

Ss. 173 & 146 (5), Central Provinces Municipal Act, II of 1922.

Ss. 322 & 323, Madras District Municipal Act, V of 1920.

Ss. 318, 321, U. P. Municipalities Act, 1916.

English Law:—

S. 268, Public Health Act, 1875.

Executive Officers Act.—The words in italics in clauses (b) and (c) of sub-section (1) should be deemed to have been inserted at the places where they are added and for the word "it" in clause (c) the word "them" should be deemed to have been inserted.

Any person aggrieved.—Having regard to the provisions of sections mentioned in S. 225, it cannot be said that the aggrieved person must of necessity have been a party to the order appealed against. The expression used is any person aggrieved and not any party aggrieved as occurs in S. 97, Civil Procedure Code. It is quite sufficient that the order must affect the person prejudicially and he must be aggrieved by it. He is entitled to prefer an appeal if an order passed behind his back affects him adversely. *Cf.* 1929 All. 912; 118 I. C. 710.

An aggrieved person under S. 318* of the U. P. Act does not mean only an aggrieved party, but includes any person who is really affected adversely by the order which may have

*S. 225 of the Punjab Act.

been passed behind his back: 1932 All. 159. *Contra* 1931 Oudh 305, where the aggrieved person under S. 193 was held to be the person whose application for sanction had been rejected.

A man aggrieved is a man against whom a decision has been pronounced which has wrongfully refused him something, which he had a right to demand. 1933 Nag. 9.

Effect of failure to appeal.—Failure to appeal under S. 225 does not deprive a person of his right to bring a suit for injunction restraining the committee from taking a certain action. 51 I. C. 708; 62 P. R. 1919.

Jurisdiction of civil courts to entertain a suit by a party aggrieved by a notice issued by the municipal committee under S. 195 is not barred by S. 225 (1). 1932 Lah. 598; 138 I. C. 743.

S. 225 does not prevent an accused person from setting up the defence that the paper served upon him was not a notice issued by the committee or by the authority of any person to whom the powers exercisable by the committee as a whole have been lawfully delegated. If such a defence is set up the magistrate ought to enquire into it and call upon the prosecution to produce evidence sufficient to satisfy him on the point. 25 I. C. 326; 36 All. 227.

In 49 Bom 152 (1925 Bom. 162; 27 Bom. L. R. 56) it was held that civil courts have no jurisdiction to entertain a suit in respect of a notice which could be questioned by appeal; where the legislature provides a particular remedy for a particular act then, speaking generally, an aggrieved person must follow that remedy before he takes other proceedings.

Order under Section 121.—Sec 42 All. 294; 58 I. C. 153.

Refusal under Section 193.—Order sanctioning erection or re-erection subject to modifications will not be open to appeal, as such orders do not amount to refusal. Where, however, the modification contemplates a refusal of a building on a portion included in the original scheme the modification may be taken to be a refusal of the plan for that portion.

Where the Act only provides a remedy by way of appeal against orders under S. 195, this will not debar a wife from instituting a suit for declaration that the committee cannot demolish the building. Notice issued to husband cannot bind the wife simply because she is the wife. 1933 All. 592,

Finality of order on appeal—Extent of powers of appellate authority.—The municipal board is not given any authority to encroach on the rights of the inhabitants except for the purpose of the benefit to the public in general. The decisions of the board or the appellate authority (collector or the commissioner, as the case may be) is no doubt final under S. 125, U. P. Act 1916 (= S. 225 of the Punjab Act); it is impossible to believe that a decision on a question of private rights could have been given finality where the decision is arrived at without hearing evidence or where the decision is arrived at by a body of men not especially trained in law respecting private rights. It is not open either to the board or to the appellate authority to disallow a proposal to erect a building on the ground that it is hideous in its appearance and would therefore injuriously affect the value of a neighbour's property. In such matters the parties should be left to seek their own remedy in a civil court. Bennet, J., (*contra*):—

BENNET J.—“For relaxing bye-law No. 23 framed by municipal board anything which would come under the three heads, *viz.*, sanitation, prevention of disease and overcrowding of houses is a matter which should be considered by the district magistrate in an appeal. But it is open to the appellant to show that the relaxation of the bye-law would adversely affect his premises in regard to any of the three heads, and if he succeeds in showing this, then it will be for the district magistrate to consider whether under those circumstances the bye-law should be relaxed or not. The very basis of the bye-law involves a question of private rights.

“The bye-law being framed by a hill municipality, the term ‘overcrowding’ as used in it, cannot mean overcrowding in the sense in which it is used in densely populated cities. The term ‘overcrowding’ means that houses should be at such distance from each other that one house is not injuriously affected by another house. ‘Sanitation’ is also a wide term. It is a mistake to consider sanitation as equivalent to a drainage system. Sanitation means the science of health, and hence the health of the inhabitants is a question that may be considered under the term ‘sanitation.’ There is no limitation that these bye-laws to be framed by a municipality under S. 29s* must only deal with buildings which abut on a road. The bye-laws on other matters such as sanitation can as well be framed. If there are such bye-laws, they regulate the discretion of the board and the district magistrate on questions as to how and when the rules under the bye-laws should be relaxed: otherwise their discretion is not limited.”

The Municipalities Act is an Act for Local Self-Government. The principle of local self-government is that the inhabitants and not experts should decide their own local affairs. Hence the decisions of the municipal board and the appellate authority, though the board is composed of members without legal training and not of experts, are conclusive as directed under S. 321 (= S. 225 (3) of the Punjab Act). 1931 All. 147.

Sanction by municipal committee.—A and B are owners of neighbouring plots. A alleges that one window and one door of his house open on to the neighbouring plot and that he has the right of way in respect of the door and a right of easement in respect of the window. On an application from B, the owner of the neighbouring plot, the municipality gave him permission to build a wall so as to block up the door of A. On appeal from A, the district magistrate upheld the permission granted by the municipality, observing that "I have to look into the matter only from the municipal point of view," and again "the matter primarily is a question for the civil court." A then brought a suit in the civil court but both courts found that under S. 321, U. P. Act the order of the district magistrate was final and could not be questioned in a civil court: *Held*, that the order of the board as confirmed by the district magistrate had nothing to say as to A's right of easement;

Held also, that A had a remedy in the civil court. 1930 Oudh 204; 123 I. C. 55.

A person served with notice under S. 186 of the U. P. Act by the municipal board, is entitled to appeal to the district magistrate under S. 318*, if he has any objection to comply with the notices served on him, and where he fails to avail himself of this remedy the criminal court in a prosecution under S. 307 is precluded under S. 321† from considering the question whether the notices are valid or invalid. 1932 All. 673, 138 I. C. 839.

In the Punjab the legality of a notice can be questioned as there is no provisions analogous to S. 321 in the Punjab Municipal Act.

Appealable.—The orders of the municipal committees under the sections specified cannot be questioned in civil courts. Such orders become final if confirmed on appeal. The cases where civil courts are competent to interfere with such orders of the committees are shown in notes under separate sections.

* Cf. S. 225 of the Punjab Act.

† This section makes the orders of the appellate authority final and provides that the orders can not be questioned by any other authority or in any other manner.

Revisions against orders under this section.—No revision lies against the orders of the commissioner. 1932 All. 651.

A court can be said to be subordinate to another court only if the latter court has appellate or revisional jurisdiction or power of superintendence given to it by some statutory provision over the former court and that the mere authority to decide a reference does not necessarily make the court making a reference subordinate to the court deciding the same. 1932 All. 651; 140 I. C. 123.

As by S. 115, C. P. C., the High Court is given revisional powers only with reference to cases decided by subordinate courts, S. 115 can only have reference to courts over which the High Court has a judicial and not a purely administrative power. *Ibid.*

District magistrate while deciding an appeal under S. 318, Municipalities Act is not a court subordinate to the High Court and as such application for revision against an order passed by him under S. 318 is not competent.

There is no analogy between a reference and an appeal. An appeal is preferred by an aggrieved party whereas a reference is made not by a party but by a court. The decision of the subject matter of appeal is by the court entertaining the appeal whereas the decision of the matter about which a reference is made is not necessarily by the court deciding the reference. *Ibid.*

Prosecution to be suspended in certain cases.

226. When any order of the kind specified in Section 107, Section 123 and Section 219 is subject to appeal, and an appeal has been instituted against it, all proceedings to enforce such order and all prosecutions for any breach thereof shall be suspended pending the decision of the appeal, and, if such order is set aside on appeal, disobedience thereto shall not be deemed to be an offence.

Notes.

S. 170 of the old Act.

Analogous Law:—

S. 196, Burma Act, III of 1898.
S. 174, Central Provinces Muni-

icipal Act, II of 1922.
S. 322, U. P. Municipalities Act, II of 1916.

Appeal from certain orders.

227. Every order of forfeiture under Section 165 and every order under Section 166 or Section 210 shall be subject to appeal to the next superior court, but shall not be otherwise open to appeal.

Notes.

S. 151 of the old Act.

Analogous Law:—

S. 323, U. P. Municipalities Act, II of 1916.

Appeal.—Appeal provided under this section for forfeitures ordered under S. 165 (2) or for confiscation ordered under S. 210 (3) will lie to the appellate authority to which the magistrate ordering the forfeiture or confiscation is subordinate, *i.e.*, to the district magistrates or the sessions judges, as the case may be.

228. Unless otherwise expressly provided no court shall take cognizance of any offence punishable under this Act or any rule or any bye-law thereunder, except on the complaint of, or upon information received from the committee [*or its executive officer*] or some person authorized by the committee [*or by executive officer*] in this behalf.

Authc
for proc
tions.

Explanation.—The committee [*or its executive officer*] may authorize any person and shall be deemed to have authorized any person appointed to this end by the local Government to make complaints or give information, without previous reference to the committee, either generally in regard to all offences against this Act and the rules or bye-laws thereunder, or particularly in regard only to specified offences of a specified class. The person authorized may be authorized by office, if he is president, vice-president, medical officer of health or secretary of the committee, or officer in charge of a police station; in other cases the authority must be personal. The authority must in all cases be in writing, and may at any time be cancelled by the committee.

Notes.

S. 186 of the old Act. The words “unless provided” in first clause are new, and the words “without reference to the committee” in the Explanation are new. There are also other slight verbal changes.

The section has been amended by Act II of 1923. Medical Officers of Health can also be authorized as such to prosecute for municipal offences.

By S. 86, Amendment Act, III of 1933, the section has been further amended by insertion of words printed in italics after the word “person” and before the words “to make”. In the Explanation the words “any person” have been substituted for the word “persons”.

Executive Officers Act.—In the municipalities to which this Act has been extended, the section must be deemed to have been amended by the insertion of the words in italics and within brackets after the word “committee” in three places.

Analogous Law:—

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|---|--|
| Ss. 352 & 353, Bengal District Municipal Act, 1884. | S. 266, Cantonment Act, II of 1924. |
| S. 533, Bengal Municipal Act, XV of 1932. | S. 218, Central Provinces Municipal Act, II of 1922. |
| S. 375, Behar and Orissa Municipal Act, 1922. | S. 391, Madras City Municipal Act, 1919. |
| S. 200, Bombay Municipal Boroughs Act, 1925 | S. 347, Madras District Municipal Act, V of 1920 |
| S. 161, Bombay District Municipal Act, III of 1901. | S. 213, Rangoon City Municipal Act, 1922. |
| S. 195, Burma Municipal Act, III of 1898. | S. 314, U. P. Municipalities Act, 1916. |

Unless otherwise provided.—Cf. Ss. 151, 153, 165, & 178.

Object of the Section.—The object of these restrictions appear to be two-fold. The first object seems to be to exclude prosecutions for what may be called municipal offences from the interference of irresponsible persons. The second object seems to be to relieve the municipality of the necessity of itself dealing with each individual case of prosecution for a municipal offence and to enable it to assign that particular function to some other person or persons. 22 All. 123.

The legislature contemplates that the prosecution for offences under the Municipal Act should be instituted by the municipality alone and not by a private individual so long as the acts complained of are offences only under the Act and not under any other Act.

On general grounds it is clear that where a statute invests any public body or officer with the enforcement of any order and enacts that that body may institute prosecutions, such a provision would be unnecessary unless the legislature contemplates that body alone as the proper person to institute prosecutions. A general right would include that body and would not need express enactment, and unless the right was confined to that body, such an enactment, on the whole, would be meaningless.

It was therefore *held* that a complaint by a private individual against his neighbour for constructing a shed without sanction of the committee was incompetent—the contention that under the general law relating to the definition of offence under the Cr. P. Code it is open to any person to lodge a complaint equally with the municipality, was repelled as the offence was under special law. 55 Bom. 89; 1931 Bom 141.

Some person authorized in this behalf.—Under a corresponding section of the N. W. P. and Oudh Municipalities

Act without the explanation corresponding to this section, it has been *held* that these words confer on municipalities the power to delegate generally their authority to make complaints in respect of municipal offences. This general delegation includes not merely the giving of authority to do the formal act of presenting a complaint to a court, but the exercise of discretion as to whether in any given case a complaint shall or shall not be made. 22 All. 123.

See 1893 Rat. Cr. Rulings 987.

An order issuing a notice to accused to do certain specified things and authorizing "Darogha Safai" to prosecute in case of non-compliance is no authority under S. 228. 34 I. C. 311; 8 P. R. 1916 Cr.

Authority to prosecute for a particular offence does not justify the person authorized to complain about a totally different offence and conviction for such an offence is illegal. 55 I. C. 599.

A complaint by a person not authorized under S. 228 is no complaint and the conviction of any person based on such a complaint is bad.

The defect is not curable under S. 537, Cr. P. C., which only covers omissions, errors or irregularities in the complaint and does not refer to a total absence of the complainant. 39 I. C. 479; 4 P. R. 1917 Cr.

Appellate court could not alter the conviction under S. 423, Cr. P. C., where the original court could not convict for the altered offence.

Failure to file the authority under which the officer had authority is an omission curable under S. 537, Cr. P. C.

Without a complaint from a municipal committee or from some body duly authorized by the committee a magistrate cannot convict an accused for an offence under S. 219, and if he does so, it is illegal and without jurisdiction. 1931 Lah. 98 (1).

A prosecution by a person not duly authorized according to S. 228 is bad and the irregularity cannot be cured by S. 537, Cr. P. C., which is not applicable to S. 228. Cf. 65 I. C. 447.

Prosecution by secretary if not specially authorized under S. 228 is not competent and this defect goes to the root of the jurisdiction of the magistrate. 1 I. C. 941 (1).

In 50 I. C. 494 a complaint by a water-works inspector not authorized was held to be unauthorized. A complaint by a Nazul Dorogah was held to be unauthorized. 20 I. C. 1003, 11 All. L. J. 721.

In the case of a sanitary inspector the authority to file a complaint should be in writing and by name and not office. Where this procedure is not followed there is no proper complaint and the conviction and sentence based on an invalid complaint cannot be maintained: 1933 Lah. 597 (1).

In order that a person can be legally convicted under S. 236* of the Cantonment Act it is necessary that the prosecution should be instituted strictly in accordance with the provisions laid down in sub-section (2), S. 236.

An executive officer of a cantonment board launched a prosecution under S. 236 against the accused and the accused was convicted under that section. The executive officer was not the person importuned, nor did the prosecution allege that the offence was committed in his presence or that he had been authorized in this behalf by the officer commanding the station:

Held, that the prosecution being illegally instituted, the conviction of the accused must be set aside. 1933 L. 590.

Applicability.—S. 228 applies only to what are generally known as municipal offences, that is to say, offences against the powers, rules and bye-laws of a municipal committee in respect of which the committee is given a discretion to complain or not to complain and the criminal courts are restrained from taking cognizance unless and until the committee has complained.

A member violating the provisions of S. 48 commits an offence not punishable under the Municipal Law, but punishable under S. 168, I. P. C., and S. 228 of the Municipal Act has no application. *Cf.* 6 N. L. R. 114; 8 I. C. 274.

Contents of complaint.—All that the S. 228 lays down is that a court shall not take cognizance of an offence under the Act except on the complaint of the committee or of some person authorized by the committee in their behalf. The complaint need not specify the section or rules of the Act which has been broken. It need only state facts and it is for the courts to decide under which section or rule an offence has been committed. 44 I. C. 744.

Complaint.—A document was addressed to the Deputy Commissioner requesting that in accordance with the committee's proceedings of 2nd May 1892, a second prosecution may be instituted against Abdul Aziz under S. 169 of Act XX of 1891.

* *Cf.* S. 152 of the Municipal Act,

The Deputy Commissioner by an order dated 23rd May 1892, ordered that "a case might be instituted and be made over to the Tahsildar of Sampla":

Held that no complaint had been made of which the magistrate could take cognizance. P. R. 1 of 1892 Cr.

The Secretary, Municipal Committee, Peshawar, wrote an informal letter to a second class magistrate making certain suggestions as to proceedings against the accused under the Municipal Act, and the verbal authorization of the Deputy Commissioner (who was also apparently president of the committee) was afterwards relied upon.

The secretary of the committee was not examined on oath with reference to the contents of his letter:

Held, that there was no complaint by the municipal committee or by some person authorized by the committee on that behalf of which a competent magistrate could take cognizance. P. R. 2 of 1892 Cr.

A complaint was filed entitled as follows: "The municipal committee through Mr. Webb, Inspector of Sanitation, complainant," against Nur Din.

At the foot was written in Urdu, "Petition of Mr. Webb, Inspector of Sanitation, Civil Station, Lahore;" below this was an English signature "D. Johnston" which appeared to be the signature of the secretary of the committee:

Held, that this was not a complaint made in accordance with law. P. R. 3 of 1892 Cr.

The Municipal Committee of Hissar on the 5th September 1893, sent a notice to accused to pull down a certain drain within six hours, and on the 4th November they drew up a *robkar* with a view to the accused being *chalanned* and sentenced to daily fine under S. 169 of Act, XX of 1891. This was sent to the Deputy Commissioner of Hissar who on 9th November directed that the *robkar* be made over to the honorary magistrate. The magistrate thereupon issued a summons to the accused and eventually fined him for disobedience of the order of the 5th September and directed him to demolish the drain and in default to pay a fine of Re. 1 *per diem* from a date specified. On revision:

Held, the proceedings must be set aside. The accused had been tried and punished without a complaint, inasmuch as the *robkar* was not a 'complaint' but merely a resolution of the municipal committee on which some person authorized by the committee might have framed a complaint but no complaint was framed and no complainant appeared before the Deputy Commissioner or the Magistrate P. R. 20 of 1894. Cr.

See 8 All. 677 and 20 Cal. 448 to the same effect.

Jurisdiction of Magistrates to convict for offence not sanctioned.—Where a sanction to prosecute for one offence is given the magistrate cannot convict for another and distinct offence. 1924 Pat. 377; 72 I. C. 894.

A complaint under S. 228 is necessary to enable the court to take cognizance of an offence punishable under the Act. But once cognizance has been taken of an offence the magistrate is seized of the whole matter as to all other accused persons whose guilt may appear during the trial of the case. 48 I. C. 886.

Written authority.—The only evidence of sanction of prosecution by a public authority is a writing under the seal and signature of that authority.

In a tabular form, called the form of prosecution, there was the name, whether of the accused or the complainant was not shown, the second head "prosecute," presumably the charge which was laid against the man, the cause; the names of witnesses; the date; and column of remarks; the Chairman or Vice-Chairman (of the Municipality); and in this column of remarks were the words: "I have seen myself" signed S. C. G. In another similar form in the column of remarks, was the word "prosecute":

Held, that this was not authority, written or otherwise, showing the consent of Commissioners or the Vice-Chairman on their behalf to a prosecution within S. 353 of the Bengal Municipal Act, 1884.

The authority which the Vice-Chairman has is to convey the sanction of the commissioners, and not to pass any order of any kind, and he must convey that sanction under his own seal and signature to the magistrate. 15 I. C. 796.

The Explanation to S. 228 only requires that the authority must be in writing. There is no further necessity of requiring such authority to give full particulars of the persons to be prosecuted. In laying down the law in 4 Lah. 120 for such a necessity the first edition of this book at page 230 was wrongly relied on; this case was, however, over-ruled by 8 Lah. 613.

Authority under the section—Necessity of mentioning the names of the accused to be prosecuted.—A general authority can be given without naming each accused to be prosecuted. 8 Lah. 613; 1928 Lah. 27 *overruling* 1924 Lah. 80; 4 Lah. 120.

Authority to prosecute a particular person cannot be utilized against a different person. 1928 Cal. 357; 112 I. C. 780.

Subsequent confirmation. — A prosecution instituted by an officer without special or general authority as required by provisions of this section cannot be validated by a subsequent confirmation of the action of the officer. *Cf. Bowyer etc., Ltd. v. Mather*, (1919) 83 J. P. 50.

Seal. — The section does not require that the authority should bear the seal. *Cf. 37 I. C. 515.*

Complaint Provision of Section 200, Cr. P. C. — Where a police officer is authorized under S. 228 by the municipal committee to make complaints with regard to offences under the Municipal Act, that police officer making the complaint and not the committee is to be regarded as complainant.

As a municipal committee is empowered to delegate its authority of making complaints under S. 228, when such authority is delegated to a public servant by virtue of his office and not by name, he acts in his capacity as a public servant when making a complaint within the meaning of S. 200 proviso (aa), Cr. P. C., and his personal attendance for examination is not necessary.

A corporation such as a municipal committee is not a public servant though the members forming the corporation are public servants. 1930 Nag. 33, 122 I. C. 258.

Although S. 228 provides that no court is to take cognizance of certain offences except with the permission of the committee, yet where the prosecution has been started on the report or complaint of some person authorized by the committee by general or special order in this behalf, either with reference to all offences, or certain specified offences, the complaint must be taken to have been properly instituted and the court is bound to take cognizance of it and to act upon it. 1929 All. 901; 120 I. C. 207.

Applicability of Penal Code to offences under the Act. — See 22 Cal. 131, 11 C. W. N. 100.

Sanction of Government is not necessary under S. 197, Cr. P. C., to the prosecution of the Administrator-General for non-compliance with municipal requisition as the Administrator-General though a public servant was not prosecuted as such but as the person in charge of premises by virtue of appointment by the court as administrator to the estate of deceased persons. 30 Cal. 927.

Sentence.—The Municipal Act is intended to check many offences petty in their nature but which may cause serious injury to the neighbourhood as by facilitating fires or serious annoyance as when a person blocks a street.

The sentence passed therefore ought to be not only punitive but also deterrent. (1894) Rat. U. C. C. 719.

It is not open to a municipal committee to start the prosecution of a person pending the decision of a civil court nor should it continue the prosecution after the civil court has decided the matter in favour of that person. 7 A. L. J. 735; 7 I. C. 288.

Court-fee.—No court-fee is leviable on complaints by municipal officers. *See* S. 19 of the Court-fee Act. Court-fee levied for process-fee may be recovered on conviction under S. 31 of the same Act.

Malicious prosecution.—Committee is liable for malicious prosecution. P. R. 86 of 1906.

See "Justice of the Peace" 1919, p. 274.

Compensation for false complaint.—A false complaint was made by a municipal servant under the sanction of the municipality. The servant was ordered to pay compensation to accused: *Held* that servant could not be protected and that the order of compensation was justified. 1886 Rat. Un. Cr. C. 309.

Power to
compound
offences

229. (1) The committee or with the authorisation of the committee its President, Vice-President [medical officer of health] executive officer or Secretary or any sub-committee thereof, may accept from any person against whom a reasonable suspicion exists that he has committed an offence against this Act or any rule or bye-law, a sum of money by way of composition for such offence.

(2) On payment of such sum of money the suspected person if in custody shall be discharged, and no further proceedings shall be taken against him in regard to the offence or alleged offence so compounded for.

(3) Sums paid by way of composition under this section shall be credited to the municipal fund.

(4) Authorization under sub-section (1) to accept composition for alleged offences may be given by the committee either generally in regard to all offences under this Act and the rules and bye-laws, or particularly in regard only to specified offences or offences of a specified class, and may at any time be withdrawn by the committee.

(5) If the committee has not authorized any of the officers specified in sub-section (1), it shall, if so required by the commissioner, give such authorisation to any of the officers specified in sub-section (1), and shall not withdraw authorisation given on such requisition without the sanction of the Commissioner.

Notes.

S. 187 of the old Act. In the old Act the power to accept composition was confined to municipalities of the first class, and the power could not be exercised without the sanction of Government.

By Act II of 1923 the words in brackets were added by S. 66 of the Amendment Act.

Clause 5 has been added by S. 87 of the Punjab Amendment Act, III of 1933. Under the added clause (5) the committees can be enjoined to give necessary powers of composition to any of the officers named in clause (1).

Analogous Law:—

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| S. 165, Bombay District Municipal Act, III of 1901. | S. 219, Central Provinces Municipal Act, II of 1922. |
| S. 517 (b), Bombay City Municipal Act, III of 1888. | S. 398 (b) Madras City Municipal Act, 1919. |
| S. 197, Burma Municipal Act, III of 1898. | S. 351 (b) Madras District Municipal Act, V of 1920. |
| S. 537, Calcutta City Municipal Act, III of 1923. | S. 219, Rangoon City Municipal Act, 1922 |
| S. 267, Cantonment Act, II of 1924. | S. 315, U. P. Municipalities Act, 1916. |

Authority in favour of all or more than one.—All officers cannot be authorized to accept composition though authority may be divided between the various officers as regards specified offences. The practice of Lahore Municipality under which all persons have been given simultaneous authority to compound offences is not justified; such authority may lead to conflicting orders. One authority sometimes refuses composition while another authority compounds the offence.

Composition under S. 195.—As the section stands there is nothing to prevent officers or sub-committees authorized to set at nought the deliberate orders of the committee under S. 195. This has often been done. When the committee has not exercised the power of composition given under S. 195 proviso the composition of offences under S. 229 is in conflict with S. 195. There is no restriction contemplated under S. 229 and though the composition as contemplated by S. 195 proviso may have been refused, there is nothing to prevent such composition under S. 229.

Under the 2nd proviso to S. 195 composition of offence regarding buildings against the scheme under S. 192 cannot be compounded though S. 229 does not specifically prohibit it.

Municipalities have no absolute power of withdrawal of prosecutions.—The provisions of S. 248, Criminal Procedure Code, have not been affected or abrogated in cases or proceedings by the corporation by the provisions of S. 229 of the Municipal Act. S. 229 is merely an enabling section and the powers given thereunder to do the various acts specified therein can only be exercised in accordance with the provisions of the Criminal Procedure Code. There is no absolute power of withdrawal. Before a withdrawal can be permitted there must be sufficient grounds to the satisfaction of the magistrate. 53 Cal. 631; 1926 Cal. 786.

Power to withdraw case instituted by secretary.—It is not competent to a municipal committee to withdraw a complaint duly instituted by the secretary; 27 Mad. L. J. 617, 23 I. C. 507.

May accept.—The section supposes that the offender is willing to compromise and offer terms for the purpose. The committee will not be justified in demanding penalties for the offence.

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230. No judge or magistrate shall be deemed to be a party to, or personally interested in, any prosecution for an offence punishable under this act or any rule or bye-law, or under any other law, within the meaning of Section 556 of the Code of Criminal Procedure, 1898, by reason only that he is a member of the committee by the order, or under the authority of which it has been instituted.

Notes.

S. 188 of the old Act.

Analogous Law:—

Cf. Explanation to S. 556, Cr. S. 392, Madras City Municipal P. C. of 1898. Act, 1919.

S. 513, Bombay City Municipal S. 198, Burma Act, III of 1898. Act, 1888.

Case includes appeal.—An appeal against a conviction for an offence under the Municipal Act was preferred to the district magistrate who was also chairman of the municipality. All prosecutions were ordinarily instituted under the sanction of the chairman. On an application to the High Court for a transfer to the court of some other magistrate:

Held that apart from the question whether there was any disqualification under S. 556, Cr. P. C., the case was one which it was expedient should be transferred to another court.

S. 556 of the Cr. P. C. renders a magistrate incompetent to try a municipal case if he is the chairman of municipality. The words "try the case" in that section are comprehensive enough to include the hearing of an appeal. 23 Cal. 44.

Personal interest of the Municipal Commissioner.—A member of a municipal committee who has taken an active part in issuing an order under the Punjab Municipal Act is disqualified within the meaning of S. 556, Criminal Procedure Code, 1882, from trying as a magistrate a charge alleging disobedience of the very order which he assisted in promulgating. P. R. 3 of 1895 Cr. ; P. R. 5 of 1896 Cr. *Cf.* also 18 Bom. 442; 1883 A. W. N. 181.

A municipal councillor reported to the council an offence against a conservancy provision which came to his notice. The council of which he was a member directed the prosecution. The councillor also sat on the bench of magistrates who tried the offender and convicted him: *Held* that the municipal commissioner was not interested in the matter and the proceedings were not illegal. 2 Weir 278.

Where a magistrate acting in the capacity of the president of a sub-committee orders prosecution of a person, he is deemed to be personally interested in the case and has no jurisdiction to try the case even with the consent of the accused. 32 All. 635; 7 I. C. 291.

Where a district magistrate is not in any way concerned with a municipality, the mere fact that he received copies of proceedings of the municipality in his capacity as official head of the district, would not debar him from hearing an appeal against the conviction of a servant of the municipality.

Where a magistrate in the capacity of president of the committee at whose instance the prosecution of a person for encroachment is started and who takes part in promoting the prosecution by concurring in the sanctioning of the same, he is disqualified under S. 556, Cr. P. C., from trying the case by reason of the existence of personal interest over and above what might be felt by every municipal commissioner in the affairs of the committee.

It is highly undesirable that the president should try the municipal cases. 42 I. C. 761.

Municipal corporation's servant acting as a judge.—A was prosecuted for carrying on business in Calcutta without having taken out license under Bengal Act, IV of 1876. The case was heard by B, a servant of the corporation, and also a justice of the peace. A was convicted and sentenced to pay a fine. On revision it was *held* that the proceedings and ultimate conviction were illegal inasmuch as B being a servant of the prosecutor had such an interest as might give him a bias in the matter and consequently he ought not to have sat as a justice of the peace. 7 Cal. 322. See also 10 Cal. 194.

Chairman as judge.—In a case the district magistrate was present as chairman of the municipal commissioners when the order was passed for the disobedience of which the accused was tried and convicted by the same district magistrate. The conviction was set aside as illegal. The section is rather intended to prevent an objection being raised that from the mere fact that the magistrate might happen to be a municipal commissioner, he was necessarily disqualified from holding a trial in which some municipal matter was involved. It is a very different thing when, as in the present case, we find that the magistrate is practically one of the prosecutors and judge. By the common law a judge who has an interest in the result of a suit is disqualified from acting except in case of necessity, where no other judge has jurisdiction. The law does not measure the amount of interest which a judge possesses. If he has any legal interest in the decision of the question one way, he is disqualified, no matter how small the interest may be. 10 Cal. 1030.

Disqualification of a member acting as a Magistrate.—Where a magistrate as a member of the district board presided at a meeting of the board at which the proposal in the commissioner's letter to support the prosecution was adopted and it was resolved that the police be called in to make an enquiry and to proceed against such of the district board officials as the result of the enquiry might warrant: *Held* that the magistrate is debarred from trying the cases. 1928 Lah. 114; 108 I. C. 271.

A conviction by a bench of magistrates including a salaried officer of the committee was held to be bad. 10 Cal. 194.

CHAPTER XII.

CONTROL.

231. (1) The Commissioner or the Deputy Commissioner within their respective charges, or any official not below the rank of Extra Assistant Commissioner authorized in writing by the Commissioner in the case of municipalities of the first class or the Deputy Commissioner in the case of municipalities of the second class or any person empowered by the local Government, in this behalf by a general or special order, may—

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- (a) enter on, inspect and survey, or cause to be entered on, inspected and surveyed, any immovable property occupied by any committee or joint committee, or any work in progress under its direction;
- (b) by order in writing addressed to the secretary call for and inspect or cause to be inspected any book or document in the possession or under the control of any committee or joint committee and the member or servant of the committee in possession of such book or document shall immediately place such book or document at the disposal of the secretary, who shall immediately comply with such order and shall immediately inform the President of the requisition. He shall also bring the matter to the notice of the committee at its meeting next following;
- (c) by order in writing addressed to the secretary require any such committee or joint committee to furnish within a specified period such statements, accounts, reports and copies of documents relating to the proceedings or duties of the committee as he may think fit to call for;
- (d) inquire generally into the affairs of a committee or joint committee with a view to ascertaining whether a municipality is being satisfactorily administered, and for the purposes of such inquiry make use of any property of the committee, and of the powers mentioned in clauses (a), (b) and (c), and the members, officers, and servants of the committee shall render such assistance in the inquiry as may be deemed necessary.

Explanation.— Any person so empowered shall be a public servant within the meaning of Section 21 of the Indian Penal Code.

(2) The Commissioner or the Deputy Commissioner may record in writing for the consideration of any such committee

or joint committee any observations that he may think proper in regard to the proceedings or duties of the committee.

(3) Every committee shall submit such periodical reports to the Deputy Commissioner or other authority as the local Government may direct.

Notes.

S. 176 of the old Act. The present section has been substituted by S. 88 of the Punjab Amendment Act, III of 1933.

The S. 231 before amendment read as follows:—

231. (1) The Commissioner of the division or the Deputy Commissioner of the district may—

- (a) enter on, inspect and survey, or cause to be entered on, inspected and surveyed, any immovable property within the limits of the division or district respectively occupied by any committee or joint committee, or any work in progress within those limits under its directions;
- (b) by order in writing call for and inspect any book or document in the possession or under the control of any committee or joint committee having authority within the said limits;
- (c) by order in writing require any such committee or joint committee to furnish such statements, accounts, reports and copies of documents relating to the proceedings or duties of the committee as he may think fit to call for; and
- (d) record in writing, for the consideration of any such committee or joint committee, any observations he may think proper in regard to the proceedings or duties of the committee.

(2) Every committee shall submit such periodical reports to the Deputy Commissioner or other authority as the local Government may direct.

Analogous Law:—

S. 62, Bengal District Municipal Act, 1884.	Ss. 46, 47 & 48, Cantonment Act, II of 1924.
S. 545, Bengal Municipal Act, XV of 1932.	S. 52, Central Provinces Municipal Act, II of 1922.
S. 382, Behar and Orissa Municipal Act, 1922.	S. 41, Madras City Municipal Act, 1919.
S. 213, Bombay Municipal Boroughs Act, 1925.	S. 34, Madras District Municipal Act, V of 1920
S. 173, Bombay District Municipal Act, III of 1901.	Ss. 224 & 225, Rangoon City Municipal Act, 1922.
S. 526, Bombay City Municipal Act, III of 1888	Ss. 32 & 33, U. P. Municipalities Act, 1916.
S. 182, Burma Municipal Act, III of 1898.	S 44, Punjab District Board Act, 1883.
Ss 15 & 16, Calcutta City Muni-	cipal Act, III of 1923.

Changes introduced by the Amendment Act, III of 1933:—

There was no specific provision as to which officer was to comply with requisition under clauses (b) and (c). The requisition will now be addressed to the secretary. There was no limit of time within which the requisition was to be complied with. Now the clause requires immediate compliance.

(1) Under clause (2) the powers of deputy commissioners and commissioners could be delegated to any person. This has been retained. The amendment empowers commissioners or deputy commissioners to delegate these powers to any official of a certain rank.

(2) Clause (d) is new. The old clause (d) has been incorporated in sub-section 2. This clause enables the officers to make enquiries into the affairs of the committees. This clause is evidently enacted to meet the objections which were urged against the appointment of what is called the Dobson Enquiry Committee.

Control.—This and the following sections provide for general control by local Governments over the administration of the municipalities.

232. The Commissioner or Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee or joint committee, or prohibit the doing of any act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under the Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or [contrary to the interests of the public or likely to cause waste or damage of municipal funds or property] or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, [to encourage lawlessness] or to cause injury or annoyance to the public or to any class or body of persons."

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Notes.

S. 177 of the old Act.

This section has been substituted by S. 89 of the Punjab Amendment Act, III of 1933. This substituted section has added the words within brackets to the provision as it existed before amendment.

Analogous Law:—

- S. 63, Bengal District Municipal Act, 1884.
 S. 548, Bengal Municipal Act, XV of 1932.
 S. 383, Behar and Orissa Municipal Act, 1922.
 S. 214, Bombay Municipal Boroughs Act, 1925.
 S. 174, Bombay District Municipal Act, III of 1901.
 S. 183, Burma Municipal Act, III of 1898.

- S. 19, Calcutta City Municipal Act, III of 1923.
 S. 51, Cantonment Act, II of 1924.
 S. 53, Central Provinces Municipal Act, II of 1922.
 S. 44, Madras City Municipal Act, 1919.
 S. 36, Madras District Municipal Act, V of 1921.
 S. 223, Rangoon City Municipal Act, 1922.
 S. 34, U. P. Municipalities Act, 1916.

Where any person is aggrieved by any order, sanction or resolution of the committee he may move Commissioner or Deputy Commissioner if such order, sanction or resolution is open to objections contemplated in the section. He has his remedies in a civil court as well, but he cannot move a civil court to interfere with orders passed under this section and confirmed under S. 235.

Remedies of the persons affected by such orders.—The orders under S. 232 are executive orders, and even if they do not strictly fall within the purview of law, no civil court can interfere with such orders. Under S. 235, committee is called upon to furnish an explanation, but where the committee is itself the mover in the matter, committee cannot be expected to furnish an explanation. The person affected may make a representation to higher authorities, but there is no specific provision for requiring such explanations from the person affected.

Body of persons.—This is very vague or probably purposely kept vague.

Jurisdiction of Civil Courts.—Where a permission granted by the committee to erect a temple was cancelled by the district magistrate purporting to act under S. 232 of the Act, *held* that the plaintiff was not entitled to maintain the suit in a civil court for a declaration to build that temple against the order of the district magistrate; *held further*, that a civil court had no power to disturb the order of the district magistrate who acted within his jurisdiction and whose order was affirmed by the local Government under S. 235. *Cf.* 1 I. C. 896 ; 6 All. L. J. 458.

Exercise of powers under Section 232.—This power can only be exercised so long as the matter rests in the stage of a mere resolution. Contracts are not necessarily rendered invalid where such contracts are based upon the resolution which has been set aside by the Government. 1926 Mad. 341 ; 92 I. C. 311 ; 50 Mad. L. J. 59.

233 (1) In cases of emergency the Deputy Commissioner may provide for the execution of any work, or the doing of any act which a committee is empowered to execute or do, and the immediate execution or doing of which is, in his opinion, necessary for the service or safety of the public, and may direct that the expense of executing the work or of doing the act shall be forthwith paid by the committee.

Extraord-
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(2) Should the expense be not so paid, the Deputy Commissioner may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as may from time to time be possible, from that balance, in priority to all other charges against the same.

Notes.

S. 178 of the old Act.

Analogous Law:—

S. 551, Bengal Municipal Act, XV of 1932.

S. 215, Bombay Municipal Boroughs Act, 1925

S. 175, Bombay District Municipal Act, III of 1901.

S. 84, Burma Municipal Act, III of 1898.

Ss. 54 & 56, Central Provinces Municipal Act, II of 1922.

S. 37, Madras District Municipal Act, V of 1920.

S. 36, U. P. Municipalities Act, 1916.

Scope.—This section empowers Deputy Commissioners to exercise emergent powers in the interests of public safety. In practice, however, Deputy Commissioners sometimes at the instance of municipalities, exercise powers with which the section was never intended to arm the Deputy Commissioners. This section corresponds to provisions of S. 35 and is open to the same abuse as S. 35. From the wording of the section it is clear that it applies to cases where some work is to be carried out in the interests of public safety. When, however, owing to the absence of municipal meetings building applications cannot be considered on merits within the time allowed, Deputy Commissioners can not pass orders refusing such applications.

234. (1) When the Commissioner, after due enquiry, is satisfied that a committee of the first class has made default in performing any duty imposed upon it by this Act, [or by any order or rule under this Act] he may, by an order in writing, fix a period for the performance of that duty; and, should it not be performed within the period so fixed, he may appoint some person to perform it, and may direct that the expense thereof shall be paid within such time as he may fix by the committee.

Power
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(2) Should the expense be not so paid, the Commissioner may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as may from time to time be possible from that balance, in priority to all other charges against the same.

(3) The Deputy Commissioner shall have the same powers with respect to committees of the second class as are by this section conferred upon the Commissioner with respect to committees of the first class.

Notes.

S. 179 of the old Act.

By S. 90 of the Punjab Amendment III of 1933, sub-section 1 has been substituted for the old sub-section. This substitution has added the words in brackets.

Analogous Law:—

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| Ss. 64 & 65, Bengal District Municipal Act, 1884. | Ss. 49 & 50, Cantonment Act, II of 1924. |
| S. 549, Bengal Municipal Act, XV of 1932. | S. 55, Central Provinces Municipal Act, II of 1922 |
| S. 384, Behar and Orissa Municipal Act, 1922. | Ss. 23 & 42, Madras City Municipal Act, 1919 |
| S. 218, Bombay Municipal Boroughs Act, 1925. | S. 39, Madras District Municipal Act, V of 1920. |
| S. 178, Bombay District Municipal Act, III of 1901. | Ss. 226 & 227, Rangoon City Municipal Act, 1922. |
| Ss. 518 & 520, Bombay City Municipal Act, III of 1888. | S. 35, U. P. Municipalities Act, 1916. |
| S. 185, Burma Municipal Act, III of 1898. | <i>English Law:—</i> |
| Ss. 17 & 18, Calcutta City Municipal Act, III of 1923. | Ss. 299 & 300, Public Health Act, 1875. |

Comments.—In cases of non-feasance this is the only remedy open to the public. If on representation received from the public or from persons aggrieved, the officials named are satisfied that the committee is committing default in the way contemplated in the section, the officials are empowered to secure the performance of the duty within a fixed period by ordering the committee to do the needful and if the duty is not carried out then the Commissioner can appoint some person to perform it and may fix a period for the performance of the duty and may order the recovery of expenses.

Duties imposed by this Act, etc.—The Government has now been empowered to impose certain duties. When so imposed the commissioner will be entitled under this section to compel performance of the duty and to fix the time during which the duty shall be performed by the committee. Ss 38 (2), 39, 41, 96, 107, 123 (1), 125 (4), 142 (2), 167, 192 (2) are some of the sections under which the Government can require the performance of certain duties and when the Government so requires, the committees must perform the duties within reasonable time and if default is made the Commissioner on satisfaction that default has been made can get the duty performed. This power can be exercised in the case of first class municipalities by the Commissioner and by Deputy Commissioner in the case of other municipalities.

Default. - The word does not necessarily imply moral obliquity or breach of contractual obligation. It simply means failure or omission to do. It means neglect to do what duty or law requires. It also means omission to do something which the person concerned is bound to do. 57 I. C. 509; 31 Cal. 901.

It is within the scope of S. 234 for the Commissioner to fix a period for the performance of a particular duty by the municipality under S. 234 provided that the municipality have made a default in performing a duty imposed on them by the Act. It is not essential that under sub section (2) the person to whom the direction is given must be a municipal servant. Cf. 51 Bom. 105; 1927 Bom. 55; 100 I. C. 98.

235. When the Deputy Commissioner makes any order under Section 232, Section 233 or Section 234, he shall forthwith forward to the Commissioner, and, when the Commissioner makes any order under Section 232 or Section 234, he shall forthwith forward to the local Government, a copy thereof, with a statement of the reasons for making it and with such explanation, if any, as the committee may wish to offer, and the Commissioner or the local Government, as the case may be, may thereupon confirm, modify or rescind the order.

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S. 180 of the old Act.

Analogous Law:—

- S. 63 (2), Bengal District Municipal Act, 1884.
- S. 548 (3), Bengal Municipal Act, XV of 1932.
- S. 214, Bombay Municipal Boroughs Act, 1925.
- S. 174, Bombay District Municipal Act, III of 1901.

- Ss. 183 (2) and 184 (3), Burma Municipal Act, III of 1898.
- S. 53, Cantonment Act, II of 1924.
- S. 44, Madras City Municipal Act, 1919.
- S. 35 (2), Madras District Municipal Act, V of 1920.
- S. 34, U. P. Municipalities Act, 1916.

236. (1) The local Government, and the Commissioners and Deputy Commissioners acting under the orders of the local Government, shall be bound to require that the proceedings of committees shall be in conformity with law and with the rules in force under any enactment for the time being applicable to the Punjab generally or to the areas over which the committees have authority.

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(2) The local Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing annul or modify any proceeding which it may consider not to be in conformity with law or

with such rules as aforesaid, [or for the reasons which would in its opinion justify an order by the Commissioner or Deputy Commissioner under Section 232].

(3) The Commissioner of the division and the Deputy Commissioner may, within their jurisdiction, for the same purpose exercise such powers as may be conferred upon them by rule made in this behalf by the local Government.

Notes.

S. 181 of the old Act.

Sub-section (2) has been substituted by S. 91 of the Punjab Amendment Act, III of 1933. By this amendment the words in brackets have been added. By this addition local Government has also been empowered to exercise powers under S. 232.

General
powers of Local Government
over a Commissioner.

237. Notwithstanding anything in this Act, the local Government shall have the power of reversing or modifying any order of any officer of the local Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purposes of this Act the local Government shall exercise over its officers and the Commissioner shall exercise over the Deputy Commissioner all powers of superintendence, direction and control.

Notes.

S. 185 of the old Act.

This section has been substituted by S. 92 of the Punjab Municipal Amendment Act, III of 1933. The section has entirely been recast and considerably altered.

The original S. 237 was as follows :—

237. Notwithstanding anything in this Act, the local Government shall have and exercise over Commissioners, Deputy Commissioners, and Commissioners shall have and exercise over Deputy Commissioners in all matters connected with this Act the same authority and control as they, respectively, have and exercise over them in the general and revenue administration.

Notes.

S. 185 of the old Act.

Analogous Law :—

S. 220, Bombay Municipal Boroughs Act, 1925.

S. 180, Bombay District Municipal Act, III of 1901.

S. 192, "Burma Municipal Act, III of 1898.

S. 58, Central Provinces Municipal Act, II of 1922.

238. (1) Should a committee be incompetent to perform, or persistently make default in the performance of, the duties imposed on it by or under this or any other Act, or exceed or abuse its powers, the local Government may,* by notification, in which the reasons for the doing shall be stated, declare the committee to be superseded.

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(2) When a committee is so superseded, the following consequences shall ensue:—

- (a) All members of the committee shall, from the date of the notification, vacate their seats.
- (b) All powers and duties of the committee [may until the committee is reconstituted, be exercised and performed by such person as the local Government may appoint in that behalf.
- (c) All property vested in the committee shall, until the committee is reconstituted, vest in His Majesty.

(3) The Government may, if it shall think fit, at any time constitute another committee in the place of any committee superseded under this section.

Notes.

S. 182 of the old Act.

Analogous Law:—

Ss 65-6, Bengal District Municipal Act, 1884
Ss. 550 & 552, Bengal Municipal Act, XV of 1932.
Ss. 385-6, Behar and Orissa Municipal Act, 1922
S. 219, Bombay Municipal Boroughs Act, 1925.
S. 179, Bombay District Municipal Act, III of 1901.
S 187, Burma Municipal Act, III of 1898.

S. 54, Cantonment Act, II of 1924.
S. 57, Central Provinces Municipal Act, II of 1922.
S. 41, Madras District Municipal Act, V of 1920.
S. 228, Rangoon City Municipal Act, 1922.
Ss. 30 & 31, U. P Municipalities Act, 1916.

English Law:—

S. 299, Public Health Act, 1875.

Comments.—Under provisions somewhat similar to Ss. 10 and 238 of the Punjab Act, it has been *held* in a Madras case that the supersession of a municipal committee under S. 238 is only a suspension of such body for a limited period and such supersession is different from, and has not the effect of a dissolution under S. 10. The reconstitution of such a

* The words "with the previous approval of the Governor-General in Council" were repealed by the Devolution Act, India Act, XXXVIII of 1920.

† Proviso was also repealed under the above Act.

committee under S. 238 (3) is the revival of the old corporation and not the creation of a fresh one and all the rights and liabilities of the superseded committee will devolve on the committee so reconstituted as its rightful successor. 29 Mad. 539. An appeal against the superseded committee does not abate and can proceed against the reconstituted committee (1894) P. J. P. 444.

Officer appointed under Clause (2).—He has the same right of appeal and can apply to be made a party in place of the superseded committee. As regards the powers of such officers *see* 1 I. C. 388.

A committee of management appointed under S. 179* Bombay Act, III of 1901, is not precluded from exercising the power of the municipality under S. 186 (a)†. Procedure is not “power and duty”: the exercise of power and duty is the goal, procedure is the road by which we reach it. The whole of the procedure laid down in the Act need not be followed in its entirety and it is not verbally incumbent upon any person or persons appointed by Government to carry on the functions of the municipality. It is enough that the persons who are delegated to do the duties of the municipality carry out their functions in a reasonable and equitable manner, keeping an eye, as far as possible, on the provisions of the Municipal Act, though not being bound by them with the same strictness as the elected municipality would be. 1921 Sindh 125 (2), 80 I. C. 951.

Dispute.

239. (1) If any dispute, for the decision of which this Act does not otherwise provide, arises between two or more committees constituted under this Act or between any such committee and a district board or cantonment authority, the matter shall be referred—

- (a) to the Deputy Commissioner if the local authorities concerned are in the same district;
- (b) to the Commissioner or Commissioners of the division or divisions if the local authorities concerned are in different districts; and
- (c) to the local Government if the local authorities concerned are in different divisions and the Commissioners of the divisions cannot agree.

(2) The decision of the authority to which any dispute is referred under this section shall be final.

(3) If, in the case mentioned in clause (a), the Deputy Commissioner is a member of one of the committees or boards

* Cf. Section 238 of the Punjab Act.

† Power of appointment of executive officer as under S. 3 of Executive Officers Act.

concerned, his functions under the section shall be discharged by the Commissioner.

Notes.

S. 183 of the old Act.

Analogous Law:—

S. 66-A, Bengal District Municipal Act, 1884.	Ss. 29 (2) & 60 (1), Central Provinces Municipal Act, II of 1922.
Ss. 88 & 239, Bengal Municipal Act, XV of 1932.	S. 240, Rangoon City Municipal Act, 1922.
S. 387, Behar and Orissa Municipal Act, 1922	S. 325, U. P. Municipalities Act, 1916.
S. 188, Burma Municipal Act, III of 1898.	

240. (1) The local Government may frame forms for any proceeding of a committee ¹[and may make any rules consistent with this Act to carry out the purposes thereof and in particular and without prejudice to the generality of the foregoing power may make rules]—

Power
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- (a) with respect to the powers and duties of committees in municipalities of the first, and of the second class respectively;
- (b) as to the division of municipalities into wards, or of the inhabitants into classes, or both;
- (c) as to the number of representatives proper for each ward or class;
- (d) as to the qualifications of electors and of candidates for election;
- (e) as to the registration of electors;
- (f) as to the nomination of candidates, the time of election and the mode of recording votes;
- (g)² regulating the procedure for elections under this Act, the contribution towards election expenses by candidates, the deposit of security by candidates and the conditions of forfeiture of such deposits;
- (h) fixing the term of office of members of committees;
- (i) prescribing the qualifications requisite in the case of persons appointed by a committee to offices requiring professional skill;

¹ Substituted for the words "for which it considers that a form should be provided, and may make rules consistent with this Act" by S. 67 of the Punjab Act, II of 1923.

² Substituted by S. 93 of Act, III of 1933.

- (j) as to the priority to be given to the several duties of the committee;
- (k) as to the authority on which money may be paid from the municipal fund, and as to the management and regulation of provident funds established under Section 43;
- (l) as to the appointment, promotion, suspension, reduction, fining and dismissal of municipal watchmen;
- (m) as to the formation and working of municipal fire-brigades;
- (n)¹ as to the procedure to be observed for the employment, punishment, suspension or removal of officers and servants of the committee and as to appeal from orders of punishment or removal;
- (o) as to the conditions on which property may be acquired by the committee or on which property vested in the committee may be transferred by sale, mortgage, lease, exchange or otherwise;
- (p) as to the intermediate office or offices, if any, through which correspondence between committees or members of committees, and the local Government or officers of that Government shall pass;
- (q)² for the preparation of plans and estimates for works partly or wholly to be constructed at the expense of committees, and for the preparation and periodical revision of maps and registers made under sub-section (3) of Section 56 and for the authorities by which and the conditions, subject to which such plans, estimates, maps and registers are to be prepared and sanctioned;
- (qq)³ for the regulation of contract with electric supply companies for the supply of electric energy;
- (r) for the assessment and collection of, and for the compounding for, refunding or limiting refunds or taxes imposed under this Act, and for preventing evasion of the same; and for fixing the fees payable for notices of demands;

¹ Substituted for the words "as to the procedure to be observed for the punishment or dismissal of servants of the committee, and as to appeals from orders of punishment or dismissal" by S. 67 of the Punjab Act, II of 1923.

² Substituted by S. 93 (ii) of the Punjab Amendment Act, III of 1933.

³ Added by S. 9 of the Punjab Municipal Amendment Act, XV of 1926.

- (s) as to the conditions on which a municipal committee may receive ¹[animals or articles] into a bonded warehouse and as to the agreements to be signed by traders or others wishing to deposit ¹[animals or articles] therein;
- (t) as to the accounts to be kept by committees, as to the conditions on which such accounts are to be open to inspection by inhabitants paying any tax under this Act, as to the manner in which such accounts are to be audited and published and as to the power of the auditors in respect of disallowance and surcharge;
- (u) as to the preparation of estimates of income and expenditure of committees, and as to the persons by whom, and the conditions subject to which, such estimates may be sanctioned;
- (v) as to the returns, statements and reports to be submitted by committees;
- (w) as to the powers to be exercised by Commissioners and Deputy Commissioners under Section 236² [*and the powers to be exercised by such Local Self Government Board or Inspectorate as the Local Government may establish*];
- (x) as to the language in which business shall be transacted, proceedings recorded and notices issued;
- (y) as to the publication of notices;
- (z) to regulate the proceedings of persons empowered to accept composition under Section 229 for alleged offences; and
- (zz) generally for the guidance of committees and public officers in carrying out the purposes of this Act.
- (zzz) ³[for the same purposes as those for which a committee may make bye-laws under the provisions of Sections 31, 188, 189, 190 or 197.]

⁴[(2) Rules under clause (g) of sub-section (i) may, among other matters, provide—

- (i) for the definition of the practices at elections held under the provisions of this Act which are to be deemed to be corrupt;
- (ii) for the investigation of allegations of corrupt practices;

¹ Substituted for the word "goods" by S. 67 of the Punjab Act, II of 1923.

² The words in italics are proposed to be added by the new amendment bill published P. G. Gazette of 26th Feb. 1934.

³ Added by S. 93 (iii) of Act, III of 1933.

⁴ The whole clause was substituted by S. 7 of the Punjab Municipal Amendment Act, I of 1925.

- (iii) for making void the election of any person proved to the satisfaction of the local Government in the case of a municipality of the first class, or of the Commissioner in the case of a municipality of the second class, to have been guilty of a corrupt practice or to have connived at or abetted the commission of a corrupt practice or whose agent has been so proved guilty, or the result of whose election has been materially affected by the breach of any law or rule for the time being in force;
- (iv) for rendering incapable of municipal office either permanently or for a term of years any person who may have been proved guilty as aforesaid of a corrupt practice or of conniving at or abetting the same;
- (v) for prescribing the authority by which questions relating to the matters referred to in clauses (d), (e) and (f) of sub-section (1) shall be determined; and
- (vi) for authorizing courts to take cognizance of the breach of any such rules on the complaint of the Deputy Commissioner or some person authorized in writing by the Deputy Commissioner.]

(3) The Municipal Account Code at present in operation in the municipalities of the Province shall be deemed to have been made in pursuance of the powers conferred upon Government by sub-section (1) of this section.

(4) In making rules under clauses (d) to (g), both inclusive, and¹ [clauses (m) and (r)] of sub-section (1), the local Government may direct that a breach of any provision hereof shall be punished with fine which may extend to ² [five hundred] rupees.

(5) All rules made under this Act shall be subject to previous publication.

(6) A rule under this section may be general for all municipalities or for all municipalities not expressly excepted from its operation or may be special for the whole or any part of any one or more municipalities as the local Government directs.

³[(7) Notwithstanding anything hereinbefore contained the local Government shall not make rules under clause (sss) of sub-section (1) for a municipality unless the committee has

¹ The words within brackets were substituted for the word, bracket and letter "clause (r) "

² Substituted for the words "fifty."

³ Added by S. 93 of the Punjab Amendment Act, III of 1933.

been required by the local Government to make bye-laws under Section 31, Section 188, Section 189, Section 190 or Section 197 and has failed to make any such bye-laws, or having made them has failed to obtain their confirmation by the local Government as required by sub-section (1) of Section 201 within *nine months* of the date of the order of the local Government requiring them to be made, and any rules made by the local Government under clause (*zzz*) of sub-section (1) shall have effect as if they were, and shall be deemed for all purposes to be, bye-laws made by the committee.”]

Notes.

Sections 184, 187 (5) and 189 of the old Act.

The section was amended in 1923 and 1925. These are indicated in the foot-notes.

Clauses (*qq*) and (*zzz*) have been added while clauses (*g*) and (*q*) have been substituted by S. 93 of the Punjab Amendment Act, III of 1933.

The committees are empowered to frame bye-laws under Ss. 31, 188, 189, 190 or S. 197 and the Government has power to enjoin the committees to frame bye-laws. If the committee fails to frame such bye-laws on requisition the local Government will make rules under S. 240 to deal with matters which were to be regulated by those sections. Such rules when framed by Government shall be deemed to be bye-laws framed by committees.

Analogous Law:—

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| Ss. 15 & 69, Bengal District Municipal Act, 1884. | Ss. 30, 483 & 484, Calcutta City Municipal Act, III of 1923. |
| Ss. 20, 44, 65, 76, 122 & 215, Bengal Municipal Act, XV of 1932 | Ss. 26-31, Cantonment Act, II of 1924. |
| Ss. 18, 19, 81 & 163, Behar and Orissa Municipal Act, 1922. | Ss. 13, 17(6), 71, 76, 85 & 175-7, Central Provinces Municipal Act, II of 1922. |
| Ss. 10 (c), 208 & 240 (<i>u</i>), Bombay Municipal Boroughs Act, 1925. | Ss. 59, 347, 349(2) & 348, Madras City Municipal Act, 1919. |
| Ss. 11 (c), 46 (e), 188 & 169-172, Bombay District Municipal Act, III of 1901. | Ss. 43-50 & 303, Madras District Municipal Act, V of 1920. |
| S. 29, Bombay City Municipal Act, III of 1888. | Ss. 233 & 235, Rangoon City Municipal Act, 1922. |
| Ss. 189-191 & 193, Burma Municipal Act, III of 1898 | Ss. 11, 12, 95, 127 (<i>k</i>) & (<i>o</i>), 153, 279 & 300, U. P. Municipalities Act, 1916. |

Rule-making power is what is called subordinate legislation and its excessive use has been strongly protested against in certain quarters. See article on law-making power by

Government departments in the "Law Journal," December 18, 1926.

Principle of *ultra vires*.—This principle is applicable to rules—*See* 31 I. C. 924. Before a rule framed by any authorities empowered to make rules is declared *ultra vires*, the court must be satisfied not only that it had no power to act under the power under which it purported to act but also that it had no power to act at all under any law to act as it did. 18 Mad. 236; 1924 Mad. 92; 1925 Nag. 393.

Election Rules—Preliminary.—"In every civilised state where freedom prevails, the conduct of affairs, as well in the community at large as in the many subordinate institutions which exist within it, is practically in the hands of majorities, and accordingly the right of vote, the conditions under which that right can be exercised, the proportional value of each vote, the qualification of the voters, and of the representatives for whom they vote, the registration of the voters, the safeguards against an improper exercise of the franchise, the regulations under which elections are held, corrected, or set aside, the penalties imposed on those who abuse the system, and above all, the nature of the tribunals to whom the decision of all these matters is committed—all these things must, or ought to be, of vital importance to every thoughtful citizen." Halsbury's "Laws," Vol. XII, p. 135.

Interpretation of statutes conferring powers for certain purposes.—The general principle of interpretation of statutes requires that in absence of anything to the contrary in the context or otherwise a power being given for effectuating a purpose may be exercised not only once but as often as may be necessary for effectuating such purposes. 1927 Mad. 22, 99 I. C. 18.

Rule 45 of the Punjab Election Rules, 1930, makes the decision of the local Government final if questions arise as to the interpretation of the rules regarding the conduct of elections formulated by the Government under the Municipal Act, and therefore where the question raised does not relate to the interpretation of any of the rules framed by the Government but relates to the application of a specific provision of the Act, jurisdiction of the civil courts is not ousted. The Government by constituting itself the final tribunal in interpreting the rules made by it cannot, though the rules form part of the Act, reserve to itself the exclusive right to interpret the specific provisions of the Act, thus ousting the jurisdiction of the civil courts. *Cf.* 105 I. C. 364, 1927 Mad. 971,

Clause (a).—The following municipalities belong to the first class:—

Amritsar, Delhi, Dalhousie, Dharamsala, Lahore, Multan, Murree, Sialkote and Simla.

Clauses (b) to (d).—These matters are prescribed by rules applicable to each municipality.

Preparation of election roll—Qualifications of voters and candidates.—Excluding nominated members, all other members are elected by voters who are enrolled in the Municipal Election Roll. Detailed provisions are made in the general election rules applicable to all municipalities regarding the preparation of this election roll while qualifications of voters and candidates are prescribed by election rules separately made for each municipality. Generally every male person who has attained the age of 21 years and who pays a qualifying tax, or owns immovable property of a certain value or occupies a house of certain rental and who has resided in the municipality for certain period are qualified to vote. Some municipalities also prescribe an educational qualification as entitling a person to vote. Persons not possessing the above qualifications are also entitled to vote if they are in receipt of certain income as laid down in the rules. As regards candidates they must be entitled to vote before they can be elected and no person is entitled to vote unless he is enrolled.

The qualifications for a candidate are somewhat higher than those for voters. A person who is in fact enrolled though not legally entitled to be so, is nevertheless entitled to vote: *Flintham v. Roxburgh*, (1886) 17 Q. B. D. 44. A person may possess the necessary personal and property qualifications, but he will not be entitled to vote at an election unless his name appears in one or other of the lists of electors which are prepared, revised and published every year.

Rules for the preparation of electoral roll — Revising Authority—and Waiting Board.—The rules under Madras District Municipalities Act consist of two distinct parts: first, referring to the revising authority, the second to the Waiting Board. The members in waiting are not included in the revising authority which body shall consist of certain three persons, none of them being a member in waiting. The second part of the rule provides that certain persons may be appointed to the Waiting Board to take the place of any member of the Revising authority. The fact that he takes the latter's place does not alter his status and convert him into a regular member. A Waiting Board is intended to be a reserve and can never become anything more than such reserve. Its members are outside the board and they are to be called out in emergencies to act temporarily as substitutes.

The Collector originally nominated three persons as members of a Revising Board; he also appointed certain members in waiting. On one of the nominated members declining to serve, the Collector nominated another person in his place. It was contended that when a nominated member refused to serve, it was a member in waiting that should have stepped into his place:

Held, that under rule 6 there could not be a proper Revising Board of two members and in appointing the third, the Collector was perfectly right.

Where the chairman of a Revising Board has a personal interest and bias in the result of a person's name being included in the electoral roll, the chairman is disqualified from adjudicating upon the claim of that person; but that person, aware of the objection of interest, cannot take the chance of a decision in his favour and afterwards raise the objection.

A final decision ought not to be pronounced in a case in which the members of the Revising Board differ until by conference and discussion of the points in difference they have endeavoured to arrive at a unanimous judgment. *Cf.* 53 Mad. 693; 1930 Mad. 258; 30 Mad. L. J. 622.

Inclusion of name in Electoral Roll—If an objection is made that a person whose name is included in the electoral roll is not an assessee then all the revising authority can enquire into is the fact whether he has been assessed. The question whether the assessee has been illegally or improperly assessed is a matter which does not lie within the scope of the revising authority. 1932 Mad. 171, 136 I. C. 319.

Under the Municipal Act, and the rules framed under it the Magistrate appointed under rule 9 for this purpose is *persona designata* and not merely a selected member of the court and chosen to represent it and therefore the High Court has no jurisdiction to entertain a revision against his order. 1927 Mad. 93; 99 I. C. 148.

Qualification of a voter.—Where the payment of income-tax is a necessary qualification for a voter, a person whose income is below the taxable minimum but who submits to the levy of the income-tax does not thereby acquire the statutory qualification as a voter. 10 I. C. 43, 38 Cal. 501.

Under S. 10-A of the Madras District Municipalities Act and rule 6 of the rules framed under S. 250 a person is disqualified from being appointed or elected a councillor if, before his election he is convicted of an offence which, in the opinion of the local Government, disqualifies him from

being a councillor even though such opinion of the local Government is arrived at after the election.

The refusal by Governor in Council to remove a councillor under S. 19* for such conviction is no bar where such councillor is subsequently re-elected to the invalidation of the election on the ground of such conviction. 30 Mad. 113.

Where the income of both the father and the son is assessed to income-tax, both were held qualified to vote under clause (2) of S. 15 of the Bengal Municipal Act. The fact that they are living as members of a Hindu joint family and their income is assessed jointly does not take away the right of the son to vote.

A son who is occupying a building belonging to his father and is living there as the son of his father and not as an owner is not a person qualified to vote. Cf. 70 I. C. 154.

Joint family—Right of individual members.—Where a person in receipt of certain income is entitled to vote under rules 12, 14 & 15 and the Explanation to the rule provides that for purposes of the rules the manager of a joint Hindu family shall be deemed to be the person in receipt of joint family income: *Held* that Explanation is not a disabling provision but only applies where the total income of a joint Hindu family exceeds Rs. 120 but the income of the individual members is less than that amount. In such a case the legislature intended to provide that the manager of a joint Hindu family alone should have a vote in a *quasi* representative capacity on behalf of the family. Where a member of a joint Hindu family is clearly a person in receipt of the annual income of not less than Rs. 120 he is entitled to vote. It matters not whether such person pays in or does not pay in his income or part thereof to the joint family fund. He is clearly entitled to vote. Cf. 1926 Nag. 66, 88 I. C. 480.

Note.—Under the rule any person could be a voter who was in receipt of an annual income of not less than Rs. 120, and for the purpose of the rule the member of a joint Hindu family was deemed to be in receipt of the joint family income.

Hindu joint family or association should be represented by an individual of that family or association and not by a stranger. 15 I. C. 441 ; 39 Cal. 754.

Residence.—The rules usually require a residence for twelve months preceding the date fixed for preparation of electoral roll. Under local Government Act, 1894, a similar

* Cf. S. 16 of the Punjab Act.

residence is required, and in the interpretation of the provisions of that Act it has been *held* that the word "residence" must be determined with reference to the purpose of the statute in which it is used: *Blackwell v. England*, (1858) 27 L. J. Q. B. 124. In the text it appears to mean a personal dwelling within the union, as distinguished from the mere occupation of property. See *R. v. Bredwardine*, (1920) 1 K. B. 47; 83 J. P. 269. For some purposes a person may have more than one residence; thus he may have houses in different places, each of which may be called his residence: *Walcot v. Boyfield*, (1854) 18 Jur. 570; 1 Kay, 534; and for purposes of this Act a man can reside in more than one place. *Stanford v. Williams*, (1899) 80 L. T. 490; 15 T. L. R. 316.

Further, the residence must be during the whole of the twelve months preceding the election. This provision resembles that in the Municipal Corporations Act, 1882, S. 9 (now repealed), and as but for the passing of the 48 and 49 Vict. c. 9 the letting of a house furnished for any part of the twelve months disqualified a person from being a burgess, so any similar letting would disqualify a person from being elected or being a guardian, if his only qualification is residence. But a mere temporary absence with intention to return, and a right to return at any time, does not defeat a qualification by residence. *Stanford v. Williams*, *supra*.

Finality of voters list—Rule 12 (3) of Election Rules made under Section 240.—In view of the provisions contained in Rule 12 (3) made under S. 240 it is manifest that the election of a member of a municipal board cannot now be questioned on the ground that he was not qualified to be a voter, or, in other words, that his name had wrongly found place on the list of electors passed by the revising authority and finally accepted by the district magistrate. *Cf.* 1931 All. 26.

Disqualifications.—The General Election Rules prescribe certain disqualifications which prevent a voter from becoming candidate for membership. These are laid down in rule 2 of General Election Rules published in Punjab Government Notification No 17877, dated 25th September 1917, as amended by No. 10150, dated 24th March 1923. As regards contracts disqualifying a person see Notes under S. 48.

A person who is disqualified under S. 48 of the Act is *ipso facto* disqualified for election as a member.

A person who held and still holds an office of profit under the committee, such as teachership, is not qualified to be elected a member. *Cf.* 47 I. C. 169.

Election.—Rule 27¹ of Rangoon Election Rules clearly contemplates disqualification for nomination as well as election and consequently an objection as to the validity of nomination upon the ground of disqualification if not brought under rule 27, it is not open to the objector to bring it under rule 53. High Court can in a suitable case issue a mandamus on the officer holding inquiry under rule 54, to forbear from doing so. 1931 Rang. 326.

Discharged Insolvent.—Where an insolvent is discharged as an insolvent under Act 14 of 1882 immediately upon the granting of the application for adjudication, in considering the status for such person subsequently and for the purposes of qualifications for standing as a candidate, it is not requisite for the Court to consider the effect of the various sections in Act III of 1907. 1932 All. 58.

The discharge in this case was under the C. P. Code, 1882; the provisions of the later Act, are not applicable. 1932 All. 58.

Words “irregularity in election proceedings” do not cover the election of a disqualified candidate. 1931 Rang. 326.

A disqualification under S. 49 Madras District Municipal Act, 1920 can be made a ground for a petition before an Election Court impugning an election and so the Election Commissioner has the jurisdiction to inquire into the objection of such a nature. 1933 Mad. 133.

S. 15¹ of the Bengal Act, III of 1884. authorises the local Government to frame rules in all matters necessary to the proper conduct of elections. In view of the Explanation to S. 15 it might be possibly said that it is open to the local Government subject to the provisions of S. 14² to provide by rule that entry in the register of voters shall be itself a sufficient qualification. But in the case of persons possessing the qualification required by the proviso to S. 15 or by the rules framed under such section, entry in the register to be regarded not so much as in itself a qualification but as the evidence upon which the polling officer must proceed. For this purpose the register is conclusive, and if the result is that a duly qualified person finds himself debarred from voting, the conclusion to be drawn is not that Government by rule has improperly deprived him of his rights, but that he himself has failed to furnish the necessary evidence of his title. The proviso to rule 11 applies not only to the rectification of the register for the purposes of bye-elections but also

¹ Cf. Rule 21 of the Punjab Election Rules.

² Cf. S. 240 (1) clauses (a) to (g).

³ Cf. S. 12 of the Punjab Act.

to general elections. Subject to this interpretation of the proviso to rule 11 both rules 6 and 11 are *intra vires*.

A suit for declaration that plaintiff is a qualified voter is cognizable by a civil court.

Where the chairman of a municipality has acted in contravention of the rules, a suit for declaration that plaintiff is a qualified voter and for mandatory injunction against the chairman to enter the plaintiff's name in the register of voters lies in a civil court. 1921 Cal. 85; 57 I. C. 900.

Clauses (d) to (g).—The whole system of election is governed by rules made by Government under these clauses. Some of the judicial decisions dealing with election disputes are noted below under different heads.

Validity of election rules.—On the construction of a corresponding provision in the U. P. Municipalities Act it was contended that the Government has no power to make rules regulating matters after the election and that Government has no power to regulate the hearing of petitions questioning the validity of elections. It was *held* that the words are wide enough to permit local Government to frame rules connected with election whether before or after the recording of votes and the declaration of the poll and that it was within the powers of Government to frame rules providing for the decision of questions relating to the validity of election. 21 I. C. 575; 35 All. 578.

Under a clause similar to S. 240 it has been *held* by Sadashiv Aiyer, J., that the Governor in Council has no power to make rules ousting the jurisdiction of the civil courts in the matter of enquiring into the validity or otherwise of elections relegating those matters to a special tribunal established for the purpose; while *per contra* it has been *held* that the Governor in Council has the power of making rules to provide for the whole scheme of elections and for the conduct of enquiries into complaints and objections to elections held or about to be held as well as into objections to the list of voters and such rules have the effect of taking away from the jurisdiction of civil courts the responsibilities of these matters. 59 I. C. 245.

The validity of rules made by the Governor acting with his ministers under S. 176 (2), C. P. Municipalities Act, conferring jurisdiction on judges of civil courts as civil courts to decide election disputes cannot under S. 52-B, Government of India Act (1919) be questioned in any legal proceedings on the ground that they do not relate to a transferred subject, but are included in the provincial subject of administration of justice which is a reserved subject. Cf. 1931 Nag. 82.

Validity of Election Rules—Doctrine of *ultra vires*.—Before a rule framed by a rule-making authority is declared *ultra vires* the court must be satisfied not only that it had no power to act under the power under which it purported to act, but also that it had no power at all under any law to so act. If power can be found elsewhere than the section quoted, the rule will be referred to that power and held not to be *ultra vires*. 1924 Mad. 92; 45 Mad. L. J. 156; 76 I. C. 212.

Validity of Election Rules - Ouster of jurisdiction of Civil Courts.—Local bodies being creatures of the statute and that statute having given power to the Government to frame rules for the purpose of working the Act it is perfectly open to the Government to create a forum for the purpose of deciding disputes as to election directed to be carried out under the provisions of the Act. Where the Government in passing the Local Boards Act has not taken away any rights which had previously vested in the public, restrictions could be imposed by the Government acting on the rule-making power by an enactment which creates new rights so long as the rules are not repugnant to any of the provisions of the Act. If power is given to make rules by the Act the fact that the Government purports to make rules under one section rather than another would not be a ground for holding that the rules are *ultra vires*. If the rule is valid the Government has power to declare what shall be the nature and scope of the enquiry: 47 Mad. 325; 1924 Mad. 523; 78 I. C. 91. (Opinion of Sadashiv Iyer, J., expressed in 59 I. C. 245 *disapproved*.) See also 1933 Nag. 193.

Jurisdiction of local Government to create Special Tribunals and to oust jurisdiction of Civil Courts.—The words “to make laws for the peace and good Government of the territories for the time being constituting that province” in S. 79 of the Government of India Act 1919 are very wide and include a power to direct that disputes of a particular kind shall be decided in a particular way and before a tribunal specially created for the purpose.

The term “Civil Courts” used in the Letters Patent, clause 11, does not cover a tribunal created under a particular statute for a particular purpose, *e. g.*, a court created under the U. P. Municipalities Act.

A power of reference is not a modified form of appellate jurisdiction. A right of appeal is a right conferred on the suitor. A power of reference is a power vested in the court. It lies in the sole discretion of the court to exercise or not to exercise it. An appeal pre-supposes a decree or order already passed against which the appeal is directed. The

power of reference is exercised while the case is still pending in order to enable the court to arrive at a correct decision. A court to whom a reference can be made is not necessarily authorised to hear appeals from the court making a reference.

The whole scheme of the Act and election rules clearly implies an intention that election of any person as a member of the board shall only be challenged by an election petition presented in accordance with rules under the Act and no suit lies in civil court to challenge the same. *Cf.* 47 All. 513; 1925 All. 380.

Validity of Register.—Where the name of a candidate is not clearly recorded in the register of voters and was corrected at the revision no objection can be taken to the election of such a candidate on the ground that the name of the candidate ought not to appear on the electoral poll. The validity of the registers cannot be questioned by election petition. *Cf.* 85 I. C. 322; 47 Mad. L. J. 795; 1925 Mad. 160.

Dates for Election.—Rules providing for fixing of dates for election are not mandatory but only directory and if the election for some reasons cannot be held at the dates indicated in the absence of any specific provision to the contrary it will not be illegal to fix some other dates for election. 1927 Mad. 22; 99 I. C. 18.

Where power vests in local Government for fixing fresh dates for election on the happening of a contingency the local Government has power to fix a series of fresh dates from time to time or as the occasion may require. 1927 Mad. 22; 99 I. C. 18.

Nomination.—Nomination paper should be self-contained and complete and should contain all the matters which are specified in the rules, one of them being the name and description of the candidate. If more than one nomination paper is submitted each must be complete in itself and defects of one paper cannot be made up from the entries of another. A nomination paper which omits the name of the candidate or his description is not valid. Omission cannot be supplied by a separate letter accompanying the nomination paper. *Cf.* 48 I. C. 314.

If there is a mistake in the form of the nomination papers, the nomination itself could not be rendered invalid. See *Marton v. Gorrill*, 23 Q. B. D. 139. A candidate whose nomination is invalid cannot, of course, be elected even although he received a majority of votes: *Brown v. Penn* 53 J. P. 167. If a qualified candidate and an unqualified one

be nominated for one seat and the latter be elected, the court in setting aside the election will not treat the votes given as thrown away and declare the former elected. There must be a fresh election. *Hobbs v. Morey*, (1904) 1 K. B. 74; *Boyce v. White*, (1905) 92 L. T. 240.

Nomination paper—Improper rejection.—Where the rejection of the nomination paper on the ground that it did not give the number of the ward for which the candidates decided to stand; and in the other case on the ground that the thumb mark of the seconder of the candidate has not been attested: *Held*, the rejection of the nomination paper was not in law justified. 47 Mad. 585; 1923 Mad. 475; 45 Mad. L. J. 23.

Description in nomination paper. - The question whether the addition of Rai Bahadur's title to the applicant's name was a sufficient description within the meaning of election rules was kept open. *Cf.* 48 I. C. 736, 22 C. W. N. 951.

Rejection of nomination of a candidate not on the new Electoral Roll.—The president of a Union Panchayat issued a notice for the election to be held, and fixed a day for nominations. On the same day a new election roll was published which omitted the name of the petitioner apparently on the ground that he had not paid his taxes. The date for the scrutiny of nominations was fixed a few days later. On that day, the President scrutinized the nominations on the footing of the new electoral roll, and rejected the petitioner's nomination as he was not on the electoral roll:

Held, that the decision of the president was a ministerial act and not a judicial one. And even if it be held that his act in rejecting the nomination was judicial, still his act was in accordance with rules and there was no fault to find with it. There was no ground, therefore, for the issue of a writ of *certiorari*. The petitioner's remedy was by way of election petition. 1928 Mad. 1271; 56 Mad. L. J. 162.

Nomination paper—Signature of proposer and approver.—What is contemplated by rule 2 of Schedule V of the Calcutta Municipal Act is that a nomination paper should be self-contained and complete and that the nomination paper which is presented by the candidate must contain all the matters which are specified in the rule, one of them being the description of the candidate.

It is clear from the wording of clause (d) of the rule that if a person signs the nomination paper of a candidate, either as proposer or seconder, he cannot also sign it as an approver.

The name of a firm which is not the signature of an individual voter is not a good signature of an approver under clause (d) of the rule.

The intention of the rule is that a nomination paper in order to be valid should, among other matters, contain the name of the candidate, and the names of the proposer and seconder, and then the names of the approvers.

PER WOODROFF, J.—Under rule 2 of Schedule V of the Calcutta Municipal Act alternative nomination papers may be sent to the chairman, so that if one is held, either in whole or in part, to be invalid, the other may be used. In such case, however, each nomination paper should be complete in itself.

A candidate may send in a nomination paper with names of more than 18 voters as mentioned in the rule, in order to meet the case of possible objections to any of the voters whose names appear upon the paper. In such case, more than one nomination paper may be used but the papers must be connected by placing on each paper the name, description and address of the candidate as appearing in the first paper. 48 I. C. 314; 46 Cal. 119.

Election order revisable.—In cases of gross miscarriage of justice, the High Court, as the court of supervision, would have power to revise the lower court's order on an election petition. Though the statutory tribunal to give a final decision with regard to the election may be the lower court, still if the High Court should find on revision that, by reason of any misdirection of itself or misconstruction of any important provision of law or rule, the decision of the lower court has been a decision on a basis different from that contemplated by the statutory provisions, then the High Court would, apart altogether from any question of jurisdiction or material irregularity affecting it have the power to revise the order. 1927 Mad. 935.

Rule as to reception of nomination paper by president not mandatory.—The provision with regard to the president and not the vice-president being an authority, for the purpose of presenting nomination papers and scrutinizing them, cannot be regarded as mandatory, and any infringement of the provision can only be an irregularity which would be available for setting aside the election only if and when it should be made out that such irregularity affected the result of the election. 1927 Mad. 935.

Civil suit where nomination improperly rejected.—The general right of being nominated to stand as a candidate for municipal election is a legal character, this legal character is

itself the creation of a specific statute, the Madras District Municipalities Act of 1920; and it is settled law that where a statute itself sets up a proper tribunal for trying cases of the infringement of the right to such a legal character and that tribunal has functioned judicially, the civil court will have no jurisdiction. The local Government is the final arbiter for deciding what the rules mean, and the civil court cannot ordinarily be asked to decide whether the local Government's interpretation of its own rules is right or wrong. But where the proper tribunal has declined jurisdiction and the aggrieved party is thus bereft of his statutory and constitutional remedy it is the province of the civil court of equity, to fill the vacuum created and to exercise the jurisdiction which the proper tribunal has failed to exercise. It cannot be admitted that the order of the chairman in the matter of interpretation of the rules is absolutely final. The correct principle is that when a duly constituted tribunal has refused to try the question of the right of a party to the legal character of one entitled to be nominated to stand as candidate for an election, and there is no other remedy available, the ordinary civil court has jurisdiction to entertain a suit for that relief and the right to grant proper temporary injunction restraining matters in *status quo ante* until the suit is tried. Where the election has taken place, the remedy of the candidate whose nomination paper has been wrongly rejected by the chairman is to file election petition to the proper tribunal appointed under the rules but not a civil suit he can not restrain the elected candidate from doing his duties as a commissioner. 47 Mad. 585; 1923 Mad. 475; 45 Mad. L. J. 23; 73 I. C. 619.

Suit for damages for improper rejection of a nomination paper; liability of Board. - If a man entitled to vote or to be a candidate at an election is wrongfully deprived of that right, an action for damages lies against the person so depriving him. (1 Smith's 'Leading Cases' 295 *fol.*) But if the act by which the right is interfered with is an act done in a judicial capacity no action lies unless the act is done maliciously which in this context really means dishonesty. 1923 Mad. 475; 45 Mad. L. J. 23; 73 I. C. 619.

If any duly qualified citizen or person entitled to be upon the electoral roll of any constituency is omitted from such roll so as to be deprived of his right to vote and so as to give the the returning officer an adequate ground for refusing him the right to vote on election day when the matter has to be decided summarily, and that refusal or omission from the roll, as the case may be, turns out on investigation to be wrongful, he has suffered a legal wrong; he has been deprived of a right

recognized by law, and he has against the person so depriving him a remedy by what has always been called "an action on the case" for nominal damages for the right that he has lost, which may, at the discretion of the court be punitive or exemplary as the conduct is the result of some malicious and wicked intention; and also for any pecuniary expense to which he may have been reasonably put as a result of the wrong done, for example, efforts to replace his name on the roll.

Where such an action is brought against a municipal board the complaint being that the list of candidates had been so tampered with as to deprive the plaintiff of his right to offer himself as a candidate, the question of the corporate liability of the board and the individual liability of its officers or servants must be determined according to the general law of principal and agent. 44 All. 202; 1922 All. 1.

Subscribing of nomination paper.—In respect of a single vacancy to represent a constituency there were three candidates for an election, the plaintiff and defendant being two of them. After defendant's nomination papers was filed three nomination papers proposing the plaintiff were filed. Out of these one was rejected as the proposer had also subscribed the earlier nomination paper of defendant No. 2. The second was rejected because the seconder had as proposer subscribed the nomination paper of defendant No. 2. The third was also rejected on the ground that the same voter who had subscribed as proposer of plaintiff's second nomination paper had also subscribed as proposer of third nomination paper. The president being of opinion that the moment the voter subscribed paper No. 2 his right became completely exhausted and he had no further right to sign his name on any subsequent nomination paper. Plaintiff sued for a declaration that he was validly nominated and for an injunction restraining the president from holding an election;

Held, that where the rules enact that no voter shall be at liberty to nominate more candidates than there are vacancies, what is sought to be prevented is that no voter shall nominate a larger number of candidates than there are vacancies and not that a voter shall be forbidden from subscribing more than one nomination paper in favour of the same candidate. There was but one vacancy and the voter put forward but one candidate. 1929 Mad. 607; 118 I. C. 780.

Nomination papers to be signed by candidates.—Signature of the candidate on such nomination papers is essential. An authorized agent cannot sign on his behalf. 1926 Mad. 319; 92 I. C. 119.

Omission of the name of a candidate from list of valid nominations published in accordance with the rules.—Inclusion of such name before election relates back to the date on which nominations were published. An election was held to fill up certain vacancies in the membership of a taluq board and in the list of persons whose nomination was declared to be valid published before ten days of election, the name of a candidate was not included as his nomination was rejected by the election president as invalid. Thereupon the candidate filed a suit against the election president and obtained a declaration that he was a duly qualified candidate for election and an injunction was issued restraining the defendant from holding the election on the appointed date without including the plaintiff's name as a duly nominated candidate in the ballot papers: *Held* that the inclusion of the candidate's name as a valid nominated candidate by virtue of the declaration by court related back to the date on which the nomination was published. 1927 Mad. 546; 101 I. C. 100.

Poll. - The poll is to commence at the prescribed time; and no more ballot papers should be issued after the prescribed time. The opening and closing the poll at improper hours where not done corruptly has been held not to vitiate the election, the election not being shown to be affected by it.

Votes given before or after polling hours cannot be received, are void and will be struck off on a scrutiny. If there are mistakes in a ballot paper, the voter may treat it as a spoilt ballot paper, and obtain another and vote again, and the putting of the ballot paper into the box would seem to be the final act of voting.

Withdrawal during polling.—Where for one seat there are two candidates and one of them withdraws during the progress of the polling, an immediate declaration that the other candidate is duly elected is valid.

A candidate can just as well withdraw during polling as he can before commencement of polling. A candidate can also withdraw after the election. 45 All. 685; 74 I. C. 24; 1924 All. 134.

At a municipal election candidates are under the rules entitled to withdraw at any time before the closing of the poll *Cf.* 1926 Cal 1016; 91 I. C. 722.

Transgression of rules.—Rule 17 of the rules framed by the local Government under the Bengal Municipal Act to regulate municipal elections is not a mandatory rule, and an election is not necessarily void because of an infringement of that rule. But the burden rests upon those who maintain

the validity of an election, notwithstanding an infraction of the rule, to show that the result was not affected by the infringement.

Where owing to a transgression of the rule more than one-half of the constituency did not vote at an election and it was not shown that the result of the election had not in fact been affected, the election was set aside as contrary to law. 53 I. C. 741.

The principles applicable to questions of the invalidity of elections by reason of the infringement of election rules were lucidly stated by Kennedy and Darling, JJ., in the *Islington case* (1901) 5 O'M. and H. 125.

An election ought not to be held void by reason of transgressions of the law, committed without any corrupt motive by the returning officer or his subordinates in the conduct of the election, where the court is satisfied that the election was, notwithstanding those transgressions, an election really and in substance conducted under the existing election law, and that the result of the election, that is, the success of the one candidate over the other, was not, and could not have been, affected by those transgressions. If, on the other hand, the transgression of the law by the officials being admitted, the court sees that the effect of the transgressions was such that the election was not really conducted under the existing election laws, or it is open to reasonable doubt whether those transgressions may not have affected the result, and it is uncertain whether the candidate who has been returned has really been elected by the majority of persons voting in accordance with the laws in force relating to elections, the court is then bound to declare the election void. 47 Cal. 524, 53 I. C. 741.

Not allowing the candidate's agent to be present before the polling officer at the time when the illiterate voters ask the assistance of the polling officer for the purposes of marking the ballot papers does not vitiate the election. 1929 Mad. 391; 113 I. C. 548.

Breach of rules does not render election invalid unless results materially affected.—A breach of the election rules will not in itself justify an election court holding that the election is invalid and must be set aside but it must be further proved that breach of the rules materially affected the result of the election. Where the law authorizes a fresh election to be held in the expectation of the office of a member falling vacant on a future date it must be taken to mean that the fresh election will take effect only from the

date of the creation of the vacancy. 1927 Mad. 546; 52 Mad. L. J. 309; 101 I. C. 100.

Result not materially affected. 1925 Mad. 877; 43 Mad. L. J. 696; 90 I. C. 368.

Material Irregularity—Revision.—Under the Madras rules no breach of the rules, whether mandatory or directory, shall invalidate an election unless the result of the election has been materially affected by such breach.

When dealing with an election enquiry of this kind, the judge sits as a court subordinate to High Court and therefore S. 115 applies.

What is a "material irregularity" is a matter in itself undefinable and must be decided on the facts in each case. So far as it may be negatively defined, it is not a mere mistake of fact or law unless that mistake has occasioned a wrong assumption or refusal of jurisdiction since a court which has jurisdiction to decide a case on a point of fact or law, has jurisdiction to give a wrong as well as a right decision on their point.

But when there is jurisdiction and that jurisdiction has not been exercised or has been illegally or irregularly exercised, S. 115 will apply. 1923 Mad. 254; 72 I. C. 902.

N. B.—The general rules of elections in the Punjab do not contain any rules for questioning the validity of any election held under the rules even, though the rules may have been transgressed. The election can only be set aside for corrupt practices under the Corrupt Practice Rules. It would thus appear if the decisions are to be strictly followed that the election cannot be set aside by civil court even if the rules have not been followed.

Rule 32 of General Election Rules—Validity of votes.—A vote is not invalid and should not be rejected on the sole ground that it does not bear the polling officer's initials even though it is proved that in all other respects it is a properly recorded vote by duly qualified voter.

Rule 32 is not a mandatory rule the infringement of which will render the vote necessarily invalid. The rule is evidently intended to identify the ballot paper as one given out by the polling officer. If the paper can be so identified by other evidence the absence of their initials may be disregarded. *Cf.* 1924 Mad. 38; 45 Mad. L. J. 329; 73 I. C. 540.

Validity of votes—The name of the candidate for whom the vote was not cast being struck out on the voting paper does not invalidate the vote. The appearance of tracing of some letters under the cross mark made on the voting paper against the name of one of the candidates does not invalidate

the vote unless the marks are such that the voter may be identified from them. Where the cross mark is bisected by the line between the names of the candidates no clear intention of the vote having been cast in favour of one candidate or the other can be gathered that vote should be excluded from the votes counted. The presence of writing other than the cross mark would invalidate the vote only if it should be found that the writing is a mark by which the voter may be afterwards identified. It must be either a mark which on the face of it shows or may show the person who has voted or with regard to which there is evidence on the record which shows that the mark was put in there by some pre-arrangement or conspiracy by reason whereof by looking at the mark one will be in a position to say that it is the vote of such and such person. In other cases also if the intention that the voter should be identified could be gathered from the mere appearance of the writing, the vote will be rejected. 1925 Mad. 614; 87 I. C. 216.

Marking of voting papers in the presence of candidates — Rule 33.—There is no provision in the rules insisting on the absence of the candidates or their agents from the place where the ballot paper is marked by the polling officer in the case of an illiterate voter and therefore the marking in their presence cannot be said to be a violation of any of the rules. 1927 Mad. 1000; 106 I. C. 129.

Ballot paper marking.—Putting not only the serial number on the back of ballot paper but also the voter's own number on the electoral roll renders election invalid. Rule 17* of Madras Election Rules does not require that the identification shall be made but merely that there is a possibility of such identification by reason of the mark. Cf. 46 Mad. L. J. 494; 1924 Mad. 764; 80 I. C. 401.

The placing by the polling officer of his initials on the face of the ballot paper does not *per se* contravene rule 17* and does not by itself invalidate the vote. The serial number printed on the ballot paper is not a mark by which the voter may be identified within the meaning of rule 18. The placing of such initials does not in any way facilitate the identification of a particular voter and consequently the provisions of rule 18 are not thereby infringed. Cf. 46 Mad. L. J. 491; 80 I. C. 573; 1924 Mad. 766.

When the question was whether a ballot paper which contained a cross in column 2 instead of in column 3 of the ballot paper was valid: *Held*, that it was purely a question

* Cf. Rules 32 and 33 of the Punjab General Election Rules, 1930.

of fact and according to election rules for decision of disputes, the judge's order on it is final. 1929 Mad. 793; 121 I. C. 32.

Where a court held that the marking of ballot paper by the polling officer secretly and without allowing the candidates or their agents to see how the marks were made in contravention of rule 33 (2) of Punjab Election Rules for the conduct of elections, it did not act with material irregularity in the exercise of its jurisdiction, nor assumed jurisdiction which it did not possess; so its order was not revisable. Before election can be set aside the court must come to a finding whether the result of the election would have been different had the irregularity not occurred. When such finding is wanting, material irregularity is committed. *Cf.* 1929 Mad. 257; 119 I. C. 145.

In an election two members by previous arrangement with a candidate used blue pencils to assure him that they had voted for him and election was sought to be cancelled on the ground that the secrecy of the ballot was violated:

Held, that unless it could be proved that the use of blue pencils indicated the persons who used them, the election would not be rendered invalid.

Bona fide variation in the system of drawing lots does not invalidate an election. In an election in drawing lots use of double system of slips, one set being marked with the names of candidates and the other set having one paper marked with a cross to indicate the prize and the other a blank, had to be resorted to, the system being such that the successful candidate was not necessarily the first drawn:

Held, that this was not such a variation as to invalidate the election. 1930 Mad. 97; 120 I. C. 551; 57 Mad. L. J. 481.

Cross mark by a voter.—A voter who writes the name of a candidate for whom he gives his vote instead of writing the cross mark commits a breach of the election rules. The rule is mandatory and the vote should be rejected. 1925 Mad. 1173; 90 I. C. 1055.

The principles applicable to questions of the invalidity of elections by reason of the infringement of election rules were lucidly stated by Kennedy and Darling, JJ., in the *Islington case* (*infra*):—

Right of a person to stand as candidate.—Unless the name of the candidate is entered in the list of voters he is not entitled to vote for election nor is he qualified to be elected. 53 Cal. 570; 1926 Cal. 1070.

Right to canvass is not a part of franchise of a voter, right to nominate is.—A right to canvass for or against the candidate cannot be regarded as a special right of a voter and much

less as a part of the franchise of a voter. If indeed it be a right it is a right which a voter enjoys or has with a thousand of others who are non-voters and it is impossible to recognize or give effect to any such right in law. 1927 Mad. 22; 99 I. C. 18.

The right to nominate a candidate is undoubtedly a part of the franchise and the denial of that right does constitute a denial of the franchise. 1927 Mad. 22; 99 I. C. 18.

Suits for declaration.—A suit for declaration that plaintiff is qualified to vote and to stand as a candidate for election and for a declaration that at the election he was duly elected, being of a civil nature is maintainable in a civil court.

The words "legal character" in S. 42 of the Specific Relief Act are wide enough to include the right of franchise and also the right of being elected as a municipal commissioner. 24 Cal. 107.

Where a plaintiff sued for a declaration of his right to have his name entered in the list of persons entitled to be candidates for election as members of a municipal board and brought his suit against the board in its corporate capacity, it was *held* that such a suit would not lie against the board, even if, which was not decided, it might be against the revising authority, by the irregular action of which, it was alleged, the plaintiff's name had been excluded from the list of candidates. 22 All. 143.

The plaintiff offered himself as a candidate to be elected a member in the municipal elections, but his name was not included in the list of candidates published by the Receiving Officer appointed by the Collector under District Municipal Election Rules. Plaintiff thereupon brought a suit against the municipality for a declaration that he was entitled to be elected a member at the elections and for an injunction restraining the municipality from holding the elections without accepting him as a candidate and without receiving the votes of his voters:

Held the suit for a declaration could not lie against the municipality because the municipality neither denied nor was interested to deny the character or right which the plaintiff sought to establish. It was the Receiving Officer that was concerned with that question and over him the municipality had no control.

The claim for an injunction could not be sustained against the municipality when it had done no wrong and had proposed to proceed in accordance with the rules. 30 Bom. 409.

A declaration can be granted to plaintiff that the election of the opposite party is illegal and void but where it is found that the election itself is void, a further declaration that plaintiff is duly elected cannot be granted to plaintiff. 1926 Cal. 1070; 53 Cal. 570.

Suits for declaration—Temporary injunctions.—Where it is clear that if the new board is not legally constituted, its acts will be *ultra vires*, and that if it be restrained from functioning, the duties of the board cannot be carried on at all, the chairman and the vice-chairman of the old board should continue to perform their routine duties until the new board begins to function, and in such a case the balance of convenience is on the side of a person who has brought a suit for a declaration that the election to the board is illegal and for injunction to prevent the board functioning temporary injunction should, therefore, be granted. 1929 Sindh 224.

Temporary injunctions in suits relating to elections.—See 1924 Lah. 633 and 1923 Lah. 47.

Temporary injunctions against holding elections.—A voter has no cause of action to obtain a temporary injunction to restrain the officer holding an election on the ground that the notification for holding the election was not properly notified. No mischief is caused to a voter by such election. 1926 Mad. 1147; 97 I. C. 172.

It is impossible to lay down an exhaustive rule but generally speaking, injunction should be confined to preserving a *status quo ante* to preventing damage or loss to the property in suit or to averting substantial injury. No such conditions arise when the court is moved not to reinstate the unseated councillor but to unseat the councillor declared elected in his stead and thus create vacancy in the municipal council pending a civil litigation in respect of that matter. In such case there is no ground for interference. 1926 Mad. 131; 90 I. C. 819.

Temporary injunction pending an enquiry into election petition. Pending an enquiry into an objection to an election the district judge cannot grant an *interim* injunction restraining the candidate whose election is in question from taking his seat on the municipal board. Such a power is not one vested inherently in any court trying a suit or making an inquiry. Rule 6* of the rules framed under the Act, extend only the procedure for the trial of suits and not incidental remedies provided for in C. P. C. 1924 Mad. 797; 80 I. C. 664.

*Cf. Rule 83 (3) of the Punjab General Election Rules.

Injunction to restrain election.—Though a candidate for election to a local board like any one else has a right to pursue his legal remedies, whatever they may be, save in exceptional circumstances, it is an abuse for a candidate who for some reason is shut out, to make his pursuit of his remedies in the civil courts a weapon for dislocating the electoral machinery and stopping an election. In the absence of any special reasons an order for injunction for that purpose should not be granted. 1933 Mad. 103.

Jurisdiction of Civil Courts to question validity of elections.—Where a special tribunal, out of the ordinary course is appointed by an Act, to determine questions as to rights which are the creations of that Act, then except so far as otherwise expressly provided or necessarily implied, that tribunal's jurisdiction to determine those questions is exclusive.

It is an essential condition of those rights that they should be determined in the manner prescribed by the Act to which they owe their existence. In such a case there is no ouster of jurisdiction of ordinary courts for they never had any.

The jurisdiction of the courts can be excluded not only by express words but also by implication: 31 Bom. 604; 1926 Mad. 798; Where a new duty or cause of action is created by statute and a special jurisdiction out of the course of common law is prescribed there is no ouster of jurisdiction for they never had any. 12 I. C. 311; 36 Mad. 120.

Under S. 33 of City of the Bombay Municipal Act, 1888, an applicant can question the election of every candidate on the ground that the election as a whole was invalid, for the section, after specifying two permissible grounds of objection provides that the validity of any election may be questioned for any other cause.

It is clear that the word "election" in the section is designed to express something wider than a legally valid election. 31 Bom. 604; *see also* 21 Bom. 279.

The validity of an election can only be questioned by a "petition" presented in accordance with rules made by local Government under S. 187, U. P. Act, I of 1900; a regular suit will not lie. 21 I. C. 655.

In the absence of a rule made by the local Government under the provisions of S. 240 of the Act a civil court could not have authority to set aside a municipal election made under the provisions of that Act. The power to do acts and to perform the functions vested in municipal bodies

by this Act is a power which belongs to the sovereign authority. The creation of municipal bodies, and the vesting them with the powers that they possess under Local Act, III of 1911 can only be considered to be a delegation of powers by the sovereign authority, and the appointment by means of election of a member of a municipal committee under the Act is one method by which sovereign authority delegates a portion of its inherent powers to an individual.

S. 42 of the Specific Relief Act empowers the civil courts to give relief by way of declaration in certain class of cases. But a defeated candidate cannot ask for a declaration that he has been improperly defeated by the existence of irregularities. The words "entitled to any legal character" cannot be considered to cover such a case. *Ibid.*

Remedy. When the legislature has prescribed a particular method for the redress of an alleged wrong that method alone is open to the aggrieved party and in such a case the civil court has no jurisdiction to deal with the matter reserved by the legislature to a specially appointed tribunal. Hence the jurisdiction of the civil court to try a suit challenging the validity of the election of a chairman of a district board is impliedly barred by S. 35 (3), District Boards Act and even an arbitrary disregard by the local Government of the mandatory provisions of that section by refusing to appoint a tribunal to decide the question, does not bring into play the jurisdiction of the civil court. 1933 All. 358.

The District Boards Act is a self-contained Act containing exhaustive provisions for the constitution of boards for the preparation of electoral rolls, for the election of members and chairman of the board, for the manner in which the validity of the election of members and chairman can be called into question, and the tribunal by which such questions are to be determined.

If the law is clear it is the duty of the court to give effect to it without attempting to inquire into the reasons for the enactment. 1933 All. 358.

An elected candidate whose election has subsequently been set aside by an authority other than a civil court might be in a position to get relief under S. 42 to sue for a declaration that he was duly elected according to rules. *Cf.* 18 I. C. 122.

Where a municipal election ought to have been held under rules framed by Government in 1910, but under a direction from Government it was held under rules framed in 1884 and one of the candidates sued to have election of the other candidate declared void as being contrary to law;

Held, (1) that the suit was one of a civil nature and maintainable in a civil court especially as under the rules of 1910 the validity of election could be decided by a competent court—meaning civil court. 35 All. 308; 20 I. C. 490;

Held (2) the direction of the Government not being one of the rules framed in 1910 under the existing Act was *ultra vires* and the election in compliance with that direction was contrary to law. 20 I. C. 490; 35 All. 308.

Note.—Under the Bengal Municipal Act, *vide* S. 15 of Act, III of 1884, the election can be questioned in a civil court inspite of the decision of district magistrate appointed under the rules as the final authority for deciding election disputes. *Cf.* 1931 Cal. 36; 58 Cal. 87.

Election.—In Calcutta it has been held that courts have jurisdiction to restrain a suit by a voter to have it declared that he is a qualified voter and for mandatory injunction directing the officer to insert his name in the voter's register. 57 I. C. 960; 1921 Cal. 95.

Interference with list of candidates.—No order can be made under S. 45 of the Specific Relief Act, unless, amongst other things, it is shown that the doing, or the forbearing to do, an act by any person holding a public office or by any corporation or inferior court, is clearly incumbent on such person or court, in his or its public character, or on such corporation in its corporate character. Where the chairman of a municipality is under no obligation to exercise any judicial discretion or to take any judicial action with regard to the preparation of list of candidates, he cannot be ordered to show cause why a particular person should not be removed from the list of candidates prepared by him. 19 Cal. 192; 22 Cal. 717.

In 34 Bom. 659 the High Court, under S. 45 of Act, I of 1877, interfered with the decision of the lower court and directed the judge of the lower court to proceed in accordance with law.

Jurisdiction of High Court to interfere in orders passed by Election Court.—A civil court exercising special jurisdiction may be *persona designata* and whether it will be so or not will have to be inferred from a consideration of the special powers exercised and the special functions performed by the civil court.

When by an Act of the legislature a new authority is constituted for the purpose of determining questions concerning rights which are themselves the creation of the Act and

the judge or presiding officer of a court as distinct from the court itself is directed to perform the functions of the newly created authority then it must be presumed, unless the contrary is expressly enacted or necessarily implied, that the intention of the legislature was the judge or presiding officer should perform those functions as a *persona designata* and not as a court. Such a presumption is stronger in the case of a court like the Rangoon Small Cause Court which consists of plurality of judges when only one particular judge is vested with the new powers.

High Court has no jurisdiction to interfere in revision with the orders passed by the chief judge of a Small Cause Court, Rangoon, in the exercise of the powers conferred upon him by S. 14 of the Rangoon Municipal Act. *Cf.* 1926 Rang. 25; 91 I. C. 550; 3 Rang. 560.

The commissioners appointed to decide election petitions with their place of sitting in Rangoon are persons holding a public office of a temporary nature and therefore the High Court has jurisdiction to enforce them to do a certain act if it affects property, franchise or personal right of any person, and if it is clearly incumbent on the commissioners. Under the rules the commissioners are the sole authority to interpret any question arising on the construction of the rules, and these rules do not give any other authority the power to question that decision. Neither do the rules nor any general provision of law give the High Court, either by way of revision or appeal, any power to review that decision. It is not for the High Court to decide whether the commissioners' ruling on a particular question was right or wrong, unless it is wrong and so perverse as to amount to a refusal to exercise a jurisdiction clearly given by the rules.

Where therefore, the commissioners decided that a party substituted in place of a returned candidate whose election was challenged by an unsuccessful candidate cannot show that he himself used corrupt practices:

Held, that the High Court could not interfere. 1927 Rang. 324; 105 I. C. 428.

Right of appeal or revision.—The hearing of a petition of objections by the defeated candidate is not a suit but only a miscellaneous proceedings. No right of appeal exists unless expressed by the Civil Procedure Code or any other legal enactment. 18 I. C. 122.

The special authority hearing the petitions is not a court within the meaning of the word in S. 622, C. P. C., 1882, and the High Court has no jurisdiction to revise an order passed

by such authority rejecting an application to set aside an election. 21 Bom. 279.

A district magistrate when acting under the election rules will be a "court" within the meaning of S. 195 (b) of the Criminal Procedure Code and a prosecution for attempting to fabricate false evidence before the district magistrate when acting in this capacity cannot lie without a sanction under S. 195. 18 I. C. 408.

The decision of an election petition though heard by a munsiff is not appealable, though the decision of the munsiff was not declared final. 21 I. C. 575; 35 All. 578.

A separate suit will not lie. 21 I. C. 655; 12 All. L. J. 459.

A district magistrate authorized under election rules to hold an enquiry and decide whether a particular candidate is fit to stand for election to a municipal council is not a court subject to the superintendence of the High Court and High Court will not interfere in revision with an order passed by him. Where *quasi* judicial functions are delegated to officers whose decisions are ordinarily subject to the revisional power of High Court, they are not with reference to the delegated power, necessarily subject to courts. 25 I. C. 345; 36 Mad. 581.

The magistrate or judge hearing petitions for election under the election rules does not act as a court and his order is not subject to revision by High Court however illegal the order may be. 70 I. C. 780. See, however, a case noted below.

The district judge hearing election petition under the Madras Local Boards Act of 1920 is a court and not a *persona designata*, and his orders are subject to the revisional jurisdiction of the High Court. Final, in the order, means not open to appeal. It does not take away the revisional jurisdiction. 71 I. C. 1039; 1923 Mad. 192.

Deputy Commissioner hearing objections to the nomination of candidates or hearing election petition is not a court and the High Court will have no jurisdiction to revise his orders passed under election rules or corrupt practice rules. Cf. 21 Bom. 279.

Under U. P. Municipality Act, I of 1900, the election rules provided for hearing of objections to the validity of an election by a competent court. The words "competent court" have been held to mean a civil court. But the order of such a court is not a decree and is not therefore appealable. The court is invested with a special jurisdiction under the

rules, and but for these rules the court could not have any authority to set aside a municipal election made under the provision of the Act. The hearing of the petition under the rules is not a suit but only a miscellaneous proceedings.

Similarly in 20 I. C. 497, 35 All. 450 it was held that the order of the civil court appointed under rules to hear election petition is not a decree and hence not appealable.

A judge appointed to hear election petition is not a court within the meaning of S. 115, C. P. C., and hence no revision lies. 1923 Bom. 421; 73 I. C. 133; 1923 Mad. 169; 70 I. C. 780; 47 Mad. 369; 1924 Mad. 561; 78 I. C. 98; 1933 Bom. 105.

A sub-judge deciding an election dispute under rule 18 of the rules framed under S. 176 (2) [Cf. S. 240 (2) (v) of Punjab Municipal Act] as amended by C. P. Municipal Act, 1922 (1) is not a *persona designata*, but a court subject to the revisional jurisdiction of the Judicial Commissioner's Court has, therefore, jurisdiction to revise orders passed by the Court of the Sub-Judge, First Class, on municipal election petitions. 1931 Nag. 82.

District judge under Burma Rural Self-Government Election Rules is not a court but a *persona designata*. 1929 Rang. 352.

See 1933 Rang. 41; *contra* 1933 Rang. 2.

Election Commissioner is not a court within the meaning of S. 115, Civil Procedure Code but is a *persona designata* so that the High Court has no jurisdiction to revise his orders refusing to set aside an election. 1926 Bom. 344; 50 Bom. 357; 94 I. C. 660.

Where by statute matters are referred to the determination of a court of Record with no further provision the necessary implication is that the court will determine the matters as a court. Its jurisdiction is enlarged but all the incidents of such jurisdiction including the right of appeal from its decision remain the same. 1924 Mad. 561; 78 I. C. 98.

Final decision is revisable for want of jurisdiction.—Final means not open to appeal. *ibid.*

Cf. C. P. Code, S. 115. Final decision is revisable for want of jurisdiction. *Ibid.*

District Judge whether Court.—Where by erroneous construction of rule 10¹ of the Transitory Rules taken with

¹ Rule extending the term of existing president and other members.

S. 55,¹ of Madras Act, XIV of 1920 clause 2 (v) the district judge assumed jurisdiction to declare the membership of G as void and as a necessary consequence, his presidentship and he then went on to declare that V was duly elected, without giving any one an opportunity to show that his election was vitiated by the commission of election offences as alleged in the written statement of G :

Held, that that amounts to acting with material irregularity or illegality in the exercise of his jurisdiction. To assume jurisdiction, to do a certain act by taking an erroneous view of law when there is really no jurisdiction, raises a case for interference under S. 115, C. P. C. Both in the case of S. 578 and in that of the election rules, jurisdiction is given to the district court and is really a supplemental jurisdiction conferred on an existing tribunal and as the district court is subordinate to the High Court and subject to its appellate jurisdiction, it is open to High Court to revise its orders both under S. 115, C. P. C., and under S. 107 of the Government of India Act. The provision in rule 12, clause (3), that orders under sub rules 1 and 2 shall be final is not a bar to the exercise of the revisional powers. Full effect can be given to the provision by holding that it prevents interference with the order by way of appeal or by suit.

When revisional powers are intended to be taken away, it has always been held that it must be done by express words to that effect. Finality can be attached only to orders passed with jurisdiction as those without jurisdiction are really nullities. It seems clear from the rules that the district judge and the subordinate judge are given jurisdiction under them not as mere *persona designata* but as the presiding officers of their respective courts and they act as courts in their inquiry into such petitions: 1923 Mad. 192, 71 I. C. 1039; 46 Mad 536. If a district judge is acting within jurisdiction his orders are not open to revision even if his orders are erroneous. 1933 Mad. 260.

Suit to challenge election.—It can only be challenged by an election petition. 1925 All. 380; 47 All. 513.

Jurisdiction of Civil Courts to conduct enquiries relating to elections.—Where three candidates offered themselves for election to a taluq board, and on the day fixed for scrutiny of nomination papers the president of the board rejected the nomination paper of one candidate on the ground that

¹ Section 55 lays down disqualifications of candidates and empowers District Judge to decide questions of disqualifications.

he was an honorary magistrate and the other withdrew, consequently the third candidate was deemed to be elected. The defeated candidate filed a suit in the munsiff's court against the president and the successful candidate for a declaration that he was a duly nominated candidate: *Held*, that under the rules for the conduct of enquiries relating to elections the jurisdiction of civil court was barred. 1928 Mad. 253; 108 I. C. 212.

Status of the returning officer.—“The returning officer is to a certain degree a ministerial one, but he is not so to all intents and purposes; neither is he wholly a judicial officer, his duties are neither entirely ministerial nor wholly judicial; they are of a mixed nature. It cannot be contended that he is to exercise no judgment, no discretion whatsoever . . . the greatest confusion would prevail if such a discretion were not to be exercised. On the other hand, the officer could not discharge his duty without great peril and apprehension, if, in consequence of a mistake, he became liable to an action.” (Extract from 2 Stark 577 quoted in 31 Bom., p. 44.)

In the absence of malice no suit for damages lies against the returning officer. 31 Bom. 37.

Where the officer refused to register the name of a voter in voter's register and did not allow him to vote at the election, it was *held* that he was liable to damages, unless he acted in good faith which implied due care and diligence. 31 I. C. 322.

The function of the returning officer in deciding a question as to the eligibility of a candidate for election is in the nature of a judicial function and his decision is in the nature of a judicial decision.

If the tribunal has exercised the discretion entrusted to it *bona fide* not influenced by extraneous or irrelevant considerations and not arbitrarily or illegally, the civil courts cannot interfere, they are not a court of appeal from the tribunal but they have power to prevent the intentional usurpation or mistaken assumption of a jurisdiction beyond that given to the tribunal by law also refusal of their true jurisdiction by the adoption of extraneous consideration in arriving at their conclusion or deciding a point other than that brought before them in which cases the courts have regarded them as declining jurisdiction. 51 Cal. 279; 1924 Cal. 761.

Decision of returning officer as to validity of a vote. Jurisdiction of election court to go behind the decision of returning officer.—Where the voting papers of two voters besides the cross mark against the name of the candidate

showed lines scoring out the names of the other candidates and the returning officer did not take these votes into consideration in the candidate's favour apparently because of these lines and the election court held them to be valid in respect of these lines, *held* the election court had jurisdiction to go behind the decision of the returning officer in a matter of this kind and that there was neither lack of jurisdiction nor irregular exercise of jurisdiction which would give the High Court authority to interfere under S. 115.

All that the polling officer has to see when the voter presents himself to him is whether the name of the voter is on the roll. He need not wait to the end of the day in respect of every vote in order to see if anyone else of the same name appears and claims that he is the voter on the roll. 1925 Mad. 1207; 90 I. C. 771; 49 Mad. L. J. 381.

Corrupt and illegal practices at elections. — An election of councillors must be free; and subject to this and to certain well defined restrictions, every candidate at an election has the same right, up to and including the day of the poll, to take all proper legitimate measures to canvass the electorate and persuade them to vote for him. And all persons may legally use their legitimate influence to persuade the electors to vote for such persons as they think fit and the ordinary methods which prevail at election times, up to and including the day of poll, of persuading the electors holding meetings, posting placards, distributing handbills, and so on, are perfectly lawful, subject to certain well-defined restrictions. So likewise and upon the same conditions, the canvassing of voters which has for its chief end the bringing of every supporter to the poll, or the asking them to record their votes in favour of any particular candidate, is perfectly lawful in itself. Compulsory levies to obtain representation on municipal bodies is illegal. The election of any candidate as councillor may be avoided if that candidate by himself or his agents has been guilty of a corrupt or an illegal practice. The various Acts or Rules thereunder contain distinct provisions prohibiting corrupt practices at election and disqualifying persons convicted of having had recourse to corrupt practices from being qualified to vote for a prescribed number of years. Reference should also be made to the recent Indian Election Offences and Inquiries Act, 1920. It is not lawful for any person who is qualified or who claims to be qualified to vote at any election to accept or obtain, or agree to accept or attempt to obtain, for himself or for any other person, any gratification for voting or forbearing to vote at any election; and no person can, by any gift or reward, or agreement or

security for any gift or reward, corrupt or procure or offer to corrupt or procure, any one to vote or forbear to vote at any election. What is prohibited is illegal gratification or a promise of individual profit. This does not include a promise to vote for or against any particular municipal measure. (Aiyangar's "Law of Municipal Corporations" p. 93.)

The Punjab Corrupt Practices at Election Rules deal in detail what is meant by a corrupt practice. This definition follows the English decisions according to which corrupt practice means (1) treating, (2) undue influence, (3) bribery, (4) personation and (5) aiding, abetting, counselling and procuring the offence of personation, and (6) publication of false statements. Illegal practice is not provided for.

The gist of the offence in corrupt practices is the corrupt inducement to vote or refrain from voting, which may be given at any time, although for obvious reasons it is usually given at or shortly before the election. In one case, treating committed more than a year before the election was held to avoid the election. There cannot be corrupt practice without an intention; but with reference to illegal practices, whatever the intention may be, it could be committed.

As observed by Field, J., "a corrupt practice is a thing the mind goes along with. An illegal practice is a thing the legislature is determined to prevent whether it is done honestly or dishonestly." *Barrow-in-Furness* 4 O'M. and H. 77.

In order to constitute impersonation under *corrupt practice* rules *mens rea* is an essential ingredient.

If in an election a person whose name is on the register is shown not to have voted and it is also shown that a vote has been recorded in his name and no fraud is shown on the part of the candidate in whose favour the vote is recorded or his agents, the vote should be struck off on scrutiny but the election cannot be set aside on that ground alone.

A petition under corrupt practice rules cannot be treated as a suit.

Influencing of individual voters avoids an election only when committed by a candidate or his agents and not otherwise.

In order to avoid an election on the ground of intimidation and undue influence, it must be shown either (1) that the voting or violence was instigated by the candidate or his agents for whom he is responsible or (2) that it pre-

vailed to such an extent as to prevent the election from being an entirely free election. 46 I. C. 729.

Bribery, treating, undue influence and personation are all dealt with in detail in Rogers on "Elections," Vol. II, pp. 399—543. The offer of a bribe without acceptance would be a sufficient act of corruption. A promise to give refreshments to induce a voter to vote or refrain from voting is bribery. So also promises of situation. What is bribery *before* the voter has voted is not bribery if done *after* the voter has voted unless it is shown to have been done corruptly. In *Cooper v. Sladc*, (1856) 25 L. J. Q. B. 329, Alderson, B., in delivering the judgment of the Court of Exchequer Chamber, said: 'We think the word 'corruptly' has a definite meaning. If for instance, there had been a previous unlawful promise conditional on the voter voting, or if there had been a previous understanding to that effect, of a corrupt bargain for the future, we think the case would have been within the statute. But we are clearly of opinion that merely paying the travelling expenses honestly, with no previous engagement, is not prohibited.' The promise to a voter of his travelling expenses conditionally on his coming and voting for the promisor would amount to a corrupt practice. But a promise of travelling expenses not so conditioned is not. An unconditional promise of travelling expenses to a voter to go to a place of voting with leave to him to vote as and how he likes is not a promise of money to induce the voter to vote, being neither a promise to offer benefit nor directly to cause it. Payment of train fare and carriage expenses by a candidate to voters who had undertaken to vote for him is prohibited; and the burden lies on the candidate so paying of proving that the payments were otherwise than in return for votes. So also payments for a streamer. "Corruptly" means an act done by a man knowing that he is doing what is wrong and doing it with an evil object. Aiyangar, "Law on Municipal Corporations" pp. 99—100.

The payment of carriage hire for voters is not a valuable consideration within the meaning of S. 22 (4), of the Bombay District Municipal Act unless the free conveyances are supplied in exchange for a promise to vote for the candidate who supplies them. 49 I. C. 394.

Loans.—Loans of money to a voter or to a person likely to influence him are placed on the same footing as regards the lender as absolute gifts. Colourable payments made to voters for loss of time are illegal.

Relief.—A single act of bribery, however trifling the amount, will avoid an election. Freedom of election is at

common law essential to the validity of an election. Generally, if this freedom be by any means prevented, the election is void at common law. An election is, therefore, avoided by general bribery although not brought home to the candidates or his agents. But an election will not be avoided upon this ground unless the bribery is shown to have been so extensive that there could not have been a free election.

Treating. - Treating, which is giving meat or drink, entertainment or provision, goes more successfully by practice than bribery and a little amount produces a great deal of popularity. Different considerations apply to it than to bribery, because men often give drinks but not money. In bribery, there is a corrupt contract between the voter and the candidate for the purchase of a vote; but in treating, there is no such contract. There must be a corrupt intention manifest. "The mere exercise of hospitality is not an offence; but if, that guise of hospitality is made use of for a purpose which in the mind of the legislature is corrupt, for the purpose of inducing a man to vote otherwise than he would vote, either to vote in favour of the person who engages his feelings by giving him a handsome treat, or to refrain from voting for the man who would not do it, the legislature has said by express enactment, independently of the question of bribery, that that is an offence." And the question of corrupt treating is in all cases a question of fact.

Generally, treating may avoid an election although not brought home to the candidate or his agents; and an election will be avoided if treating is shown to have been so extensive that there could not have been a free election.

Undue influence.—Undue influence was defined by Willes, J, in the *Lichfield case* 1 O'M. and H. 25 to be the "using any violence or threatening any damage, or resorting to any fraudulent contrivance to restrain the liberty of a voter, so as either to compel or frighten him into voting or abstaining from voting otherwise than he freely wills." And again at p. 28, he said: "The law cannot strike at the existence of influence. The law can no more take away from a man, who has property, or who can give employment, the insensible but powerful influence he has over those whom he can benefit by the proper use of his wealth, than law could take away his honesty, good feeling, etc., or any other qualities which give a man influence over his fellows. It is the abuse of influence with which alone the law can deal. It is only abused in cases of this kind, where an inducement is held out by a promise to induce voters to vote or not to vote at an election." It is only the undue influence of individual voters that can invalidate an election.

Personation.—A person would be guilty of the offence of personation who at an election applies for a ballot paper in the name of some other person or of a fictitious person who having voted once applies again for a ballot paper in his own name. Generally, personation would also avoid an election if it is brought home to candidate or his agents.

Where a person appears before the identifying officer and giving a false name applies for a slip to be used for applying for the ballot paper but does not enter polling officer's room, only makes preparation to apply for ballot paper and is not guilty under rule 75 (*vi*) of the Punjab Election Rules, 1930. Cf. 1929 Mad. 489 (2); 115 I. C. 813.

In the Municipal Electoral Roll, Mohd. Din, son of Fakir Mohd. was recorded as a person entitled to vote. The accused Mohd. Din whose father's name was admittedly Abdulla asked for a ballot paper in the name of Mohd. Din, son of Fakir Mohd., and when questioned he asserted more than once that his father's name was Fakir Mohd. the contention that the officer who prepared electoral roll, intended to put the accused on the register and that Mohd. Din, son of Fakir Mohd. had no existence at all was not proved: *Held*, that the accused was guilty of personation. 1929 Lah. 52, 117 I. C. 883.

In order to constitute impersonation *mens rea* is an essential ingredient.

If in an election a person whose name is on the register is shown not to have voted and it is also shown that a vote has been recorded in his name and no fraud is shown on the part of the candidate in whose favour the vote is recorded or on the part of his agents, the vote should be struck off on the scrutiny but the election cannot be set aside on that ground alone.

An application under S. 56 of the Calcutta Municipal Act for setting aside an election cannot be treated as a suit. 46 I. C. 729.

Intimidation and rioting avoid an election.—Influencing of individual voters avoids an election on the ground of intimidation and undue influence; it must be shown either (1) that the rioting or violence was instigated by the candidate or his agents for whom he is responsible, or (2) that it prevailed to such an extent as to prevent the election from being an entirely free election. 46 I. C. 729; 22 C. W. N. 678.

Corrupt practices by candidate or his agent. — A candidate and his agent had reason to believe that there was no imposture at the time when voters came forward to apply for voting papers in the name of persons who were proved to be dead. When rival candidate challenged their identity the candidate merely stood by and the agent identified the voter: *Held*, that there was no corrupt practice by either the candidate or the agent whose connivance for procuring the application is material and a greater degree of knowledge of the truth on their part must be proved in order to establish connivance. The section need not be construed strictly. 1929 Cal. 137.

Illegal gratification to voters. — On general principles, as well as under rule 19 of the rules framed by the local Government for the conduct of elections under S. 7 of the Religious Endowments Act, XX of 1863, a candidate can be held to "give consideration in return for a vote" only when such consideration passes as the result of a bargain.

Payment of train fare and carriage expenses by a candidate to voters who had undertaken to vote for him will disqualify him from being elected under the rule.

It will be otherwise where the provision for payment is a unilateral act which might be accepted and acted upon or ignored by the other party.

The burden lies on the candidate so paying of proving that the payments were otherwise than in return for votes. 29 Mad. 166; 15 Mad. L. J. 449.

Recount. — Where a miscount is alleged by the petitioner and his application is supported by a verified petition, and the court is satisfied that there is a reasonable ground for the petitioner's belief that there has been a miscount, the court has jurisdiction to grant a recount. 1930 Mad. 195.

Rule 33 (1) of General Election Rules. — A candidate for election as a municipal commissioner is not entitled to be present in that part of the polling station where votes are actually recorded. Rights of candidates or electors which are rights expressly given by statute do not carry with them any rights under natural law not given by statutory law. *Cf.* 28 C. W. N. 832; 82 I. C. 104; 1924 Cal. 1070.

Election of President. — The special officer had finished the election of elected members and the nomination of nominated members was also done, but no president had yet been elected:

Held, that the board was not fully constituted without electing the president and that therefore the special officer

was not yet rendered *functus officio* and so could preside over meetings held before that time and was fully entitled to adjourn the meetings fixed from a certain date to another. 1930 Mad. 97; 120 I. C. 851.

Election of President of a new Municipal Board—Jurisdiction of Court to question the validity of the election.—It is not the intention of the legislature to set up the divisional commissioner as the person finally to decide questions of franchise to the exclusion of the ordinary civil courts' rights to decide such questions and the civil courts are not debarred from exercising their ordinary powers to try all suits under their general power under S. 9, Civil Procedure Code, including a suit to contest the validity of an election. 1926 Cal. 279; 52 Cal. 943.

Note.—Under the peculiar provisions of the municipal law in Bengal such suits are competent there; they are not competent in the Punjab.

Meeting regarding the election of President.—The meeting for the election of the president is different from an ordinary meeting of the board, the regulation of which meeting is prescribed by rules made under S. 31. The rules under the latter section have no application at all to the meetings held under the presidentship of the Deputy Commissioner for the election of a new president after a general election. Cf. 1926 Cal. 279; 52 Cal. 943.

Election without oath.—The election of the president of a union board held when the members of the board have not taken the oath of allegiance is invalid. 1525 Mad. 1152, 87 I. C. 825.

Where elected members of a council are authorized to elect two members to the legislative assembly, they can exercise the right of vote even if they have not yet taken the oath of allegiance.

That it was only for the purpose of exercising the legislative functions that the oath of allegiance was required and the mere fact of omission to take the oath of allegiance did not *ipso facto* cause the member of a local council to vacate his seat or make him incompetent to vote for the election of members to the Imperial Legislative Council; 20 I. C. 676; 41 Cal. 384.

Election to be set aside as a whole.—Where two or more persons out of a total number of candidates are required to be elected from a particular constituency at one election, although other candidates may not have contributed to the irregularity, if the election of one is set aside it is just and

fair that the election of the others also should be set aside. 1926 Cal. 1070; 1931 Cal. 36.

Setting aside election—Under the rules the judge has a discretion either to order a fresh election or to declare some other party to the petition duly elected. The latter course is appropriate only when the enquiry has been confined to mere technical questions about the admissibility of certain votes but when there are charges and counter-charges of corruption it would be unwise to declare some other party elected and a fresh election should be ordered. 1928 Mad. 1129.

Fresh election.—Where a candidate was unseated owing to disqualification not known to all or any of the voters fresh election should be held and seat should not be given to the next man. 48 Mad. 509; 1925 Mad. 1119.

Petition for setting aside election of President.—Rules make provisions for both cases, that is, where there are only two candidates and where there are more than two. 1926 Mad. 947; 97 I. C. 450.

No election petition lies when there is only one candidate. The return of a solitary candidate is not strictly speaking an election by the electors, for the electors would have no say whatever in the matter. 50 Mad. 951; 1926 Mad. 86.

Election rules—Petition to the officer having Jurisdiction.—Rules do not say that the petition can be presented to the district or subordinate judge having jurisdiction over the election or over any place where any act included in the term "election" is done, but merely to the district or subordinate judge "having jurisdiction," that means having jurisdiction over the place of the acts or omissions complained of. 1930 Mad. 832; 128 I. C. 146; 59 Mad. L. J. 194.

Cost in election petitions.—The special tribunal constituted to hear a petition recommended that the election of the candidate be declared void. They also recommended costs against him. The Governor set aside the election but made no order as to costs. The Governor subsequently supplied the omission by issuing a fresh notification directing the payment of costs as recommended by the commissioners:

Held, that the omission in the first notification was due to an over-sight. The subsequent notification is in fact a continuation of the first and the two should be considered as constituting one order passed in accordance with the report. The second notification was therefore *intra vires*. 1928 Rang. 293.

Where no right to relief is alleged to exist against a person, he is not a proper party, and an order making him liable for costs cannot be supported 1930 Mad. 195; 58 Mad. L. J. 118.

Costs in election petitions when awarded without power.—

Where under election rules the magistrate is not empowered to award costs in deciding an election petition, his order is without jurisdiction and the person whose property is attached in executing such order is entitled to bring a suit for the removal of the attachment treating the order of the magistrate as not binding on him. 28 All. 475.

Failure to deposit money with petition.—The Act expressly lays down that unless the deposit is made at the time of the presentation of the petition it shall be dismissed and that only on compliance with the provisions of such rule the judge shall proceed to enquire into the petition. The language is very clear and mandatory in its character and unless the condition is complied with, the petition must be rejected. 1923 Mad. 490; 72 I. C. 449.

To apply the maxim that action of court should not prejudice any party, it must be possible to hold that the failure to comply with the rule of law was due to the action of the court and not to any default of the party. *Ibid.*

In the above case the money could not be deposited in the bank as the chalan could not be ready in time and it was contended on the above maxim that action of court should not prejudice any party.

S. 27 of the Calcutta Municipal Act, III of 1923, is mandatory, and its plain sense is that within three days of the nomination the candidate must pay the deposit money, otherwise his nomination is rendered void.

The last date fixed for the filing of the nomination papers was 27th February 1927. As 27th February was a Sunday, the Chief Executive Officer of the Corporation published a notice in the *Statesman* to the effect that 27th February being Sunday, the deposit money of the candidates, ordinarily due on the 1st March under S. 27 (3) of the Act, would be received up to 5 p. m. of 2nd March. A, a candidate for election, paid the deposit money on 2nd March. The scrutiny of the nomination was held on 3rd March. A's nomination was accepted as a valid one and he was duly elected as councillor for the corporation.

Held the nomination was void:

Because the improper rejection of a nomination at the scrutiny, for any of the reasons contained in rule 15, is made

a ground for disputing the election, it is not the reasonable and correct inference to be drawn from the words of the section that the improper acceptance of a nomination which had been rendered void is not an admissible ground for the purposes of S. 46 of the above Act.

Every word *prima facie* is to be construed in its primary and natural sense, unless a secondary or more limited sense is required by the subject or the context.

The rule of construction which is called the *ejusdem generis* doctrine or sometimes *noseitur socius* is one, which ought to be applied with great caution because it implies a departure from the natural meaning of words in order to give them a meaning which may or may not have been the intention of the legislature. 1928 Cal. 209; 109 I. C. 739; 55 Cal. 173.

Forfeiture of deposit—candidate for election obtaining less than required minimum votes.—A, a candidate for municipal election got less than the minimum fraction of votes recorded which is prescribed by rule 34. But the election was subsequently quashed as being void *ab initio* on the ground that the ballot papers had no official marks as required by rule 45, all of them being thus invalid. A filed a suit for refund of deposit:

Held, that A did not forfeit his deposit. All the ballot papers being invalid there was no valid vote cast at all, and it could not be said that A received less than the requisite minimum fraction of the total number of votes validly polled:

Held also, that a forfeiture could, however, take place if the election was set aside on a ground personal to the elected candidate and a fresh election was ordered. 1932 All. 158; 135 I. C. 240; 54 All. 112.

Offences in connection with preparation of roll.—Even after the electoral roll is final and completed, any question relating to the offences committed under S. 52* and S. 55† of the Madras District Municipal Act can be gone into by a court and enquiry made regarding them. To hold otherwise would be incorrect, as then there would be no scope for the operation of those sections. 1929 Mad. 910; 122 I. C. 33.

Claim for re-election.—Where the law provided that the retiring councillor if willing to serve shall be deemed to have been re-elected if no councillor is elected at an ordinary

* Securing entry in electoral roll by deceitful means.

† Offence of fraudulent voting and personation.

election, it was *held* that a candidate cannot claim to be deemed to have been elected where no valid election takes place and where owing to serious defects in the procedure for holding elections, elections are void. 1928 Mad. 141; 106 I. C. 205.

Prosecution of—Tahsildar as a polling officer.—Prosecution of such officer does not require sanction under S. 197, Criminal Procedure Code, for prosecution for committing any offence under the election rules. 1928 Mad. 161; 51 Mad. 259.

Specific remedy.—Where the statute itself gives remedy for an infraction of any of its provisions it is not open to the court to hold that another remedy not specifically provided for is open. 1928 Mad. 641, 110 I. C. 765.

Election petition presentation.—Election petition presented to a joint magistrate who forwarded the petition to the Collector so as to reach him in time, is good where there is a recognized practice that petitions for Collectors are presented to joint magistrates. Verification of such petitions is not required. 45 All. 685; 1924 All. 567.

Election petition—Parties.—It is competent for an unsuccessful candidate at a municipal election, petitioning against the election of more than one successful candidate, to join in one petition a claim that all or any of the candidates, being more than one, be unseated. 52 I. C. 67; 41 All. 646.

Election petition—Particulars of false personation.—Where a plaintiff seeks to set aside a municipal election on the ground that the defendant was guilty of misconduct in the course of the election by procuring persons to personate dead or absent voters, he can furnish particular instances of personation even after the expiration of fifteen days from the date of the election. There is nothing in the rules which requires that all the particulars should be specified in the petition. 16 I. C. 191; 34 All. 649.

Election enquiry to be rejected *in limini*.—Unless the objections raised in the election petitions can be brought under one or other of the three sub-clauses of rule 11, the election petition should be rejected *in limini*. Where the only point taken in the petitions to contest a municipal election was that the candidates who had been declared elected had been wrongly put upon the electoral roll because they had not paid their taxes and that one of them was not a resident within the municipality:

Held, that the objection to the election was not a valid one;

Held, also that for the purposes of an election a roll has to be settled and after that is settled, it must be taken as settled for all purposes of the election up to the very end till it is finally declared who the properly elected candidate is. 1925 Mad. 707; 87 I. C. 113.

Transfer of enquiry.—*See* 1927 Mad. 536; 50 Mad. 654.

Amendment of petitions.—The tribunal should be guided wherever possible in its procedure by the provisions of the Civil Procedure Code. It is obvious that it would be a great hampering to the course of justice if in a proper case in the proper civil courts the learned judge was not allowed to entertain an amendment in accordance with the evidence. Where only vague objections are raised against an election petition without giving any particulars the objections cannot be gone into. 1926 Mad. 1043.

Inspection of ballot papers.—The power of ordering the inspection of ballot papers should be exercised by the election court with the greatest circumspection. If it is necessary to find the ballot paper the search must be conducted by the judge himself or by the subordinates in whose partiality he has complete confidence. The parties themselves should never have access to the general contents of the ballot bags. This irregularity does not, however, vitiate the enquiry. 1928 Mad. 1129; 110 I. C. 342.

Addition of votes.—The election court can reject votes but it cannot also add votes. 1928 Mad. 1129.

Extent of election enquiry.—The phrase “improper reception or refusal” in rule 75 (c) means only improper acceptance of a vote which is on the face of it invalid, or refusal to accept as proper a vote which is really proper, but there is no question of the lawfulness of the vote and questions as to the qualifications of a member cannot thus be raised in an enquiry relating to the election of the president.

The rules prescribe the forum for the determination of such questions and in the absence of an enquiry under those provisions the court which holds the election enquiry must accept the persons who act as members. As members it is not the policy of the Act or the rules framed under it to allow such an objection to be raised in an election enquiry which is confined according to rules to irregularities and illegalities in the conduct of the election itself, and not anything antecedent to it. *Cf.* 1928 Mad 1077; 115 I. C. 59.

The election of a president is not a corporate action of the board. *Ibid.*

It is outside the province of an election court to allow any candidate to examine the votes to show how the voters voted. The court is only entitled to consider the correct reception and the correct refusal of the votes. *Ibid.*

Disqualification of a candidate.—A disqualification can be made a ground for petition impugning the election under rules 1 and 11 of the rules for the decision of disputes as to the validity of election held under the Madras Municipal Act. The rules framed for the conduct of elections of municipal councillors assume that nomination of candidates is included in the election. The word "election" includes both nomination and the poll. 52 Mad. 732; 1929 Mad. 727; 119 I. C. 597.

Rule 76 of Election Rules.—Where three candidates offered themselves for an election of a taluk board, on the day fixed for the scrutiny of nomination papers, the president of the taluk board rejected the nomination paper of one candidate on the ground that he was an honorary magistrate, and the other withdrew; consequently the third candidate was deemed to be elected. The defeated candidate filed a suit in the district munsif's court against the president and the successful candidate for a declaration that he was a duly nominated candidate:

Held, that under rule 1 of the rules for the conduct of enquiries relating to elections the jurisdiction of the civil court to entertain the suit was barred. 1928 Mad. 253.

Election.—The term "election" embraces the whole procedure where an "elected member" is returned, whether or not it be found necessary to take a poll. 1928 Mad. 253; 108 I. C. 212.

Taking part in ballot. Where a person whose name had been duly proposed and seconded, himself presided at the meeting and conducted the ballot, opened the ballot box, counted the votes and acted as returning officer: *Held* this is "taking part in a ballot." The phrase is not restricted to the mere act of voting.

The rule has clearly been framed to carry out the salutary principle that no man shall be a judge in his own cause, and that it should not be in the power of one vitally interested in the result to decide such questions intimately affecting the result, *e.g.*, the validity of a particular vote as the officer presiding at the ballot has to decide. 1923 Mad. 254; 72 I. C. 902.

Revision.—The order of an election court is revisable by High Court, the judge is not a *persona designata*. 1927 Mad. 921; 105 I. C. 216.

An Election Commissioner is not amenable to the jurisdiction of the High Court and his orders are not open to revision under S. 115, C. P. C. Cf. 1924 All. 684; 83 I. C. 654.

Clause (n).—This clause has been amended by Act II of 1923. The rules for the employment and dismissal of municipal engineers made by local Government before present amendment were *ultra vires*. Those rules will now be valid under the amended clause.

Section 240 (3) - Account Code. Account Code as published has under S. 240 as much the force of law as the Act itself. Where, according to the rules, the right of an exporter of goods to get refund depends upon his adopting the procedure for obtaining a refund, his failure to comply with that procedure prevents him from putting any claim to the refund in the civil court. Under the rules goods must ordinarily be produced at the octroi office for verification unless the applicant for the refund shows sufficient reason for their inspection elsewhere. The right of an exporter to refund is not an absolute right. It is a qualified right, and dependant upon his adopting the procedure prescribed for obtaining a refund. 1926 All. 517; 24 All. L. J. 605; 96 I. C. 5.

Breach of rules of Account Code made under a repealed Act will still be punishable by virtue of the General Clauses Act. 43 I. C. 446.

S. 240-A.—Added by S. 8 of the Punjab Municipal Amendment Act, I of 1925 has been omitted in view of introduction of Chapter XIV.

CHAPTER XIII.

SMALL TOWNS.

241. (1) The local Government may, by notification, declare that, with respect to some or all of the matters upon which a municipal fund may be expended under Section 52, improved arrangements are required within a specified area, which, nevertheless, it is not expedient to constitute as a municipality.

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(2) An area in regard to which a notification has been issued under sub-section (1) is hereinafter called a notified area.

(3) No area shall be made a notified area if it contains more than ten thousand inhabitants according to the returns of the most recent official census, or unless it contains a town or bazar and is not a purely agricultural village.

Notes.

S. 210 of the old Act.

Analogous Law:—

S. 388, Behar and Orissa Municipal Act, VII of 1922.

S. 178, Bombay Act, III of 1901.

S. 210, Burma Municipal Act, III of 1898.

S. 240, Central Provinces Municipal Act, II of 1922.

S. 337, U P. Municipalities Act, II of 1916.

Power of Local Government to impose taxation and regulate expenditure of proceeds thereof.

242. (1) The local Government may —

(a) impose in any notified area [without the previous sanction of the Governor General] any tax which could be imposed there by the committee [under the provisions of Section 61 whether with or without such sanction] if the notified area were a municipality:

Provided that any tax imposed on buildings and lands shall not be subject to the maximum limits prescribed by [sub-clause (a), clause (1) of Section 61];

Provided also that a tax payable by the owner may be made payable by the occupier ;

(b) apply or adapt to the notified area for the assessment and recovery of any tax imposed under clause (a) any of the provisions of this Act, or any rules for the time being in force, with respect to the assessment and recovery of any tax imposed under this Act;

(c) arrange for the due expenditure of the proceeds of taxes imposed under clause (a) and for the preparation and maintenance of proper accounts ;

(d) appoint a committee of one or more persons for the purposes of clauses (b) and (c) ;

(e) appoint a president of such committee, and fix the term of office of member or president of the committee;

(f) extend to any notified area the provisions of any section of this Act subject to such restrictions and modifications, if any, as the local Government may think fit.

(2) The proceeds of any tax levied in any notified area under this section shall be expended only in some manner in which the municipal fund of such notified area might be expended if the notified area were a municipality.

Notes.

S. 211 of the old Act. Provisos to clause (a) are new. First proviso to clause (a) has been amended by Act II of

1923, the amendment is necessitated by new provisions of S. 61.

Recent changes.—The words within the brackets were inserted by S. 9 of the Punjab Municipal Amendment Act, 1925.

This amendment was necessitated by the decision reported in 4 Lah. 442 which now becomes obsolete.

Analogous Law:—

S. 188, Bombay Municipal Act, III of 1901.	of 1898.
S. 388, U. P. Municipal Act, II of 1916.	S. 241, Central Provinces Municipal Act, II of 1922.
S. 211, Burma Municipal Act, III	S. 389, Bihar and Orissa Municipal Act, VII of 1922.

Powers of local Government to impose taxes.—The powers conferred on the local Government by S. 242 with regard to notified areas are limited to the imposition of taxes described in S. 61-B, and the sanction of the Governor-General in Council is an indispensable preliminary condition for their imposition. A notification which is not necessary under the Act shall not be conclusive evidence that the tax was imposed in accordance with the provisions of the Act. 1927 Lah. 140; 100 I. C. 426.

Presumption under Section 62, Clause (12).—Where subsection 12 of S. 62 has not been extended to a notified area no presumption of legality of the tax can arise. Under S. 242 the Government can impose taxes without any previous notification; where a notification is not necessary under the Act it cannot be conclusive evidence of the legal imposition of the tax. 1927 Lah. 140; 100 I. C. 426.

Imposition of taxes requiring previous sanction of Governor-General.—The section does not empower the local Government to impose any tax which a committee could not impose without the previous sanction of the Governor-General in Council. 4 Lah. 442; 1924 Lah. 361.

Note.—The law has now been changed, *vide* S. 9 of Act I of 1925.

243. For the purposes of any section of this Act which may be extended to a notified area, the committee appointed for such area under Section 242 shall be deemed to be a municipality.

Application of Act to notified areas.

Notes.

S. 212 of the old Act.

Analogous Law:—

S. 189, Bombay Municipal Act, III of 1901.	S. 212, Burma Municipal Act, III of 1898.
S. 338, U. P. Municipalities Act, II of 1916.	S. 242, Central Provinces Municipal Act, II of 1922.

Discontinu-
ance of noti-
fied areas.

244. The local Government may at any time cancel or modify any notification under Section 240 or any order under Section 242.

Notes.

S. 213 of the old Act.

Analogous Law:—S. 190, Bombay Act, III of 1901.

Application
of funds of
areas ceasing
to be notified.

245. When by reason of any order of cancellation under the last foregoing section any notified area ceases to be notified, the unexpended proceeds of any taxes levied therein under Section 242 shall be applied as the local Government may think fit.

Notes.

S. 214 of the old Act.

Analogous Law:—

S. 191, Bombay Municipal Act, S. 213, Burma Municipal Act,
III of 1901. III of 1898.

S. 339, U. P. Municipalities Act, S. 243, Central Provinces Municipi-
II of 1916. pal Act, II of 1922.

***CHAPTER XIV.**

MUNICIPAL ELECTION INQUIRIES.

Definition.

246. In this chapter unless there is anything repugnant in the subject or context—

- (a) "Commission" means a person or persons appointed by the local Government to hold an inquiry in respect of an election under this Act.
- (b) "Costs" means all costs, charges and expenses of or incidental to an inquiry.
- (c) "Election" means any election held under the provisions of this Act or of any rules made thereunder.
- (d) "Inquiry" means an inquiry in respect of an election by the commission.
- (e) "Pleader" means any person entitled to appear and plead for another in a civil court and includes an advocate, a vakil, and an attorney of a high court.

Notes.

This chapter was introduced by S. 95 of the Punjab Municipal Amendment Act, III of 1933. Some of the matters

*The whole of this Chapter has been added by S. 95 of the Punjab Amendment Act, III of 1933.

were provided under election rules framed under S. 240. These rules did not provide for procedure to be followed by the commission appointed by the local Government to hold inquiries into election petitions.

For matters detailed in S. 248 there was no provision under the rules though the rules laid down that the enquiry shall be held in accordance with procedure applicable to trial of civil suits.

247. The local Government may appoint a Commission consisting of one or more persons to hold an inquiry.

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248. In respect of the following matters a Commission shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when trying a suit:—

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- (a) discovery and inspection,
- (b) enforcing the attendance of witnesses, and requiring the deposit of their expenses,
- (d) compelling the production of documents,
- (c) examining witnesses on oath,
- (e) granting adjournments,
- (f) reception of evidence taken on affidavit, and
- (g) issuing commissions for the examination of witnesses;

and may summon and examine *suo motu* any person whose evidence appears to be material; and shall be deemed to be a civil court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898.

Notes.

Ss. 480 and 482 of Cr. P. Code deal with contempt of court. These sections are made applicable to commissions who are treated as civil courts for purposes of contempt of court offences.

Analogous Law:—

S. 15 (2), Bombay Municipal S. 37 (2), Bengal Municipal Act, Boroughs Act, 1925. XV of 1932.

249. The provisions of the Indian Evidence Act, 1872, shall subject to the provisions of this Chapter, be deemed to apply in all respects to an inquiry.

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Notes.

The rules made under S. 240 though they provided for the application of the Civil Procedure Code to the enquiry were generally silent as to rules of evidence applicable. This section makes the provisions of the Indian Evidence Act, 1872, applicable to enquiries to be held under this Chapter.

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250. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

Notes.

This provision makes admissible documents which would not be admitted in evidence in proceedings before civil courts. As the enquiry is generally directed against corrupt practices in vogue in elections no documents are shut out so that all cases of corrupt practices may be fully enquired into.

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251. (1) No witness shall be excused from answering any question relating to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will incriminate or may tend, directly or indirectly, to incriminate him, or that it will expose, or tend, directly or indirectly to expose him to a penalty or forfeiture of any kind:

Provided that—

(i) no person who has voted at an election shall be required to state for whom he has voted; and

(ii) a witness who, in the opinion of the Commission, has answered truly all questions which he has been required by the said Commission to answer shall be entitled to receive a certificate of indemnity and such certificate may be pleaded by such person in any court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

(2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

Notes.

Subject to the provisions of the chapter.—S. 251 does not make S. 132 of the Evidence Act, 1872, applicable to the enquiry in its entirety. Certain modifications of S. 132 are made.

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252. Any appearance, application or act before the Commission may be made or done by the party in person or by a Pleader duly appointed to act on his behalf :

Provided that any such appearance shall, if the Commission so directs, be made by the party in person.

Notes.

Civil Procedure Court Orders 3 and 4 have been made applicable.

253. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commission to such person, and shall, unless the Commission otherwise directs be deemed to be part of the costs.

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254. At the conclusion of the inquiry the Commission shall submit a report of its findings to the local Government, if the inquiry concerns an election held in a municipality of the first class, and to the Commissioner in any other case, and such report shall include the opinion of the Commission on the amount of costs, including counsel's fees as the Commission may deem fit to be paid, and the persons by whom and to whom such costs shall be paid.

Report
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255. On receiving the report of the Commission the local Government in the case of an election held in a municipality of the first class, and the Commissioner in any other case, shall pass orders either declaring the candidate duly elected or declaring the election to be void, and such orders shall be notified in the Gazette. Such orders shall be final and shall specify the amount of costs to be paid, and the person or persons by whom and to whom such costs shall be paid:

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Provided that the Commissioner or the local Government before passing final orders may remand any case for further inquiry or refer any point arising in any case to a civil court for opinion; and the civil court shall deal with any case forwarded to it as nearly as may be according to the procedure applicable under the Code of Civil Procedure, 1908, to the hearing of appeals.

Final.—See Notes under section 225 and notes on pp.—

Under the existing rules this reference was made to the district judge.

256. A certified copy of any order passed by the local Government or by the Commissioner under section 255 regarding the cost of the inquiry may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, and such court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Payment:
costs.

Secrecy of
voting.

257. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months, or with fine, or with both.

Notes.

Cf. S. 31 of the Bengal Municipal Act, 1932.

Power to
make rules.

258. The Local Government may make rules consistent with this act, to carry out the purposes of this Chapter, and all such rules shall be subject to previous publication.

SCHEDULE.

[Vide SECTION 2 (1)]

Enactments repealed.

1	2	3	4
Year.	No.	Subject or short title.	Extent of repeal
1861	XX	<i>Acts of the Governor-General in Council</i> The Punjab Municipal Act.	The whole Act.
1896	XVIII	The Punjab Municipal Amendment Act.	The whole Act.
1900	III	<i>Acts of the Lieutenant-Governor of the Punjab.</i> The Punjab Municipal Act Amendment Act.	The whole Act.
1905	I	Act to amend certain sections of the Punjab District Boards Act, 1883, and the Punjab Municipal Act of 1891.	Sections 3 and 4.

Objects and Reasons of Act III of 1911.



Report of Select Committee and Amending Acts.

STATEMENT OF OBJECTS AND REASONS.

The law relating to municipal self-government in the Punjab is contained in the Punjab Municipal Act, XX of 1891, as amended by Act XVIII of 1896, Punjab Act III of 1900, and Act I of 1905. It is proposed to repeal these enactments and to substitute the present Bill.

2. An alteration of the existing laws is necessitated by the following considerations. Experience has shown that the Act of 1891 is in some respects faulty in drafting and clumsy in arrangement. In many cases doubts have been thrown upon the intention of the legislature, and in the present Bill the opportunity has been taken to resolve all such cases of doubt as have been brought under the consideration of Government.

3. In the second place, the advance, which has taken place during the period for which the existing law has been in force in the ideal of local self-government, has made it necessary to grant to municipalities and to the local Government more extended powers over matters affecting the health and comfort of the public. It will be found that the power now proposed to be taken does not, except in a very few cases, extend beyond power already taken in other enactments in force in British India or in rules made thereunder.

4. The main points on which it has been found desirable to amend the existing Act are the following:—

(a) Under the existing definition of annual value in S. 3 of Act XX of 1891, difficulties have arisen regarding the calculation of the deduction to be made from gross rental. While the principle of exempting furniture in such assessments has been maintained and gross rental retained as the general basis of valuation, provision has been made to regularize the various deductions made in practice by different municipalities on account of the rent of furniture. The income-tax rules have been followed as a precedent for allowing a deduction on account of repairs and of the up-keep of land let with a building.

(b) The alterations proposed in the provisions (clauses 6 to 12) dealing with the constitutions of committees have been put forward in the light of experience. It has been found that the existing law which restricts the appointment of salaried officers of Government to local bodies operates to deprive committees of a most useful class of members, and it is proposed to limit the restriction to the case of *ex-officio* seats.

(c) The continued increase in the amount and complexity of the general administration of the large towns of the province has proved that it is impossible to cope with the mass of current matters of routine without having recourse to delegation. Amendments have been proposed providing for (i) the delegation of executive duties, (ii) the exercise of statutory powers by members and officers of the committee, and (iii) the delegation of the whole powers of a committee, to be exercised within a specified area, to a sub-committee. As regards (i), the alterations proposed are purely verbal. As to (ii), the legality of the exercise, by an individual officer or member otherwise than in cases of emergency, of the statutory powers of the committee has been questioned in the courts, and as such exercise is in all large towns a matter of practical necessity, its legality has been placed on a legal footing in cases where the liberty of the individual is not seriously affected. Thirdly, it has been considered desirable to provide for cases where, as in the case of a civil station, the needs of a definite area can best be dealt with by its own representatives.

(d) Constant difficulties have been experienced in determining whether, in suits to eject trespassers from *nazul* properties in charge of local bodies, the Secretary of State should or should not be the plaintiff. The intention of Government at the time when such properties were localized is perfectly manifest: the localization scheme was not in any way to affect the proprietary right of Government. In view, however, of the wording of S. 76 of the Act of 1891, which reproduced a similar provision in that of 1884, the relative positions of Government and of local bodies in respect to such properties are not free from doubt. The fact that the existing law provides that all properties transferred to local bodies shall vest in them and belong to them might be held to defeat the manifest intention of Government to retain its proprietary right in *nazul* properties. The alterations proposed in clause 51 of the draft Bill will, it is anticipated, make it clear that any property transferred in the future, unless transferred in full proprietary right, will vest in the committee only to the extent that it will be held for management and control.

(e) Doubts have been entertained as to whether taxation assessed on the consumption of water, or partly on the consumption and partly on the rental of the house supplied, can be justified under the wording of the Act. Section 44 provides in general terms for the imposition of a water-tax, while Section 120-H refers only to the charges for connections and not for the water supplied through such connec-

tions. It has therefore been thought advisable to place the legality of such charges on a secure basis and to give to committees, as in Chapter VII, the facilities of recovery provided by the Act whether a water-tax is imposed by a percentage on the rental or payments are demanded according to the amount of the water consumed.

(f) Clauses 147 and 148 restricting the areas in which disreputable women or disorderly houses shall be permitted and providing for the removal of such establishments from the vicinity of educational seminaries and military locations, have been drafted in response to the expressed complaints of local bodies and educational and military authorities, as the existing law does not give adequate facilities for dealing with this evil. Clause 148 follows the recent legislation undertaken in Bengal in 1906 in the Bengal Disorderly Houses Act.

(g) As doubts have arisen in regard to the interpretation of the existing sections relating to the erection and re-erection of buildings, the opportunity has been taken to emphasize clearly the provisions of the law, and also to make it clear that sanction to such buildings may be refused in the interests of the public for the reservation of open sites and the prevention of overcrowding independently of the undesirability of any particular building in question.

REPORT OF THE SELECT COMMITTEE.

ON THE BILL TO MAKE BETTER PROVISION FOR THE ADMINISTRATION OF MUNICIPALITIES IN THE PUNJAB

We the undersigned members of the Select Committee to which the Bill to make better provisions for the administration of municipalities in the Punjab was referred have considered the provisions of the Bill and the opinions thereon which have been submitted by Government officials, municipal committees and members of the public, and have now the honour to submit this our report, with the Bill as amended by us annexed thereto.

The alterations necessary to give effect to our recommendations are indicated by italics in the Bill as printed.

Clause 3.—“*Annual value*”—In deference to a protest from Simla an explanation has been added to the effect that a tax primarily payable by the owner shall not be included in the gross annual rent if it is shifted by the owner by agreement on to the tenant. This restores the practice which was universally observed until a year or two ago. (Other minor changes have been made in the definition of “annual value.”

“*Building.*”—We have brought walls and wells into the definition.

"Infectious disease."—The definition has been extended so as to include plague.

"Street."—Much of the criticism of the definition included in the Bill and of the clauses of the Bill which relate to streets has been met by the expedient borrowed from the Bombay District Municipalities Act of distinguishing in the definition between streets and public streets. In the clauses of the Bill which confer or imply a right of proprietorship vested in the committee the expression "public street" is used.

A definition of "*vehicle*" has been added.

Chapter II.—We have brought together in a single chapter all the provisions of the Act on the subject of the constitution of the municipalities, and we have removed from Chapter XII of the Bill and placed in this chapter as a more logical arrangement the clauses of the Bill which relate to the alteration of municipal limits and the withdrawal of the Act from municipal areas.

Clause 16.—We are of opinion that the abuse of his position as a member should be included among the grounds justifying removal from the committee and have provided accordingly.

Clause 20.—The 4th sub-clause of the corresponding clause of the Bill as introduced has been omitted as unnecessary.

Clause 21.—It has been made clear that the president's term of office may not extend beyond the term of his membership. With regard to the term of office of vice-presidents the provisions of section 16 (1) of the existing Act have been restored.

Clause 31.—We have empowered the committee to regulate by bye-law the executive powers of its officers and servants and to provide for appeals against their executive orders and the orders of the subcommittees. Statutory powers are conferred by the Act itself and by delegation under the Act.

Clause 33.—In our opinion the delegation of the statutory powers of the committee to an individual member who is not the president or the vice-president is undesirable, and we have amended the clause accordingly. We have also added words to make it clear that delegation may be limited to particular classes of cases arising under the sections specified.

Clause 45.—The duty of the committee to give notice before discharge has been made reciprocal,

Clause 52.—To obviate possible audit objections recognition is given to existing practice by including the establishment and maintenance of public parks and gardens among the objects upon which the municipal fund may be spent.

Clause 55.—Words have been added which will enable the committee with due sanction to deposit money at interest with banks.

Clause 56 (2).—The words “otherwise than by sale” have been added because in the opinion of majority of the Select Committee immovable property purchased outright by the committee should not be liable to resumption by Government on terms differing from those which would be applicable in the case of resumption from a private purchaser.

Clause 61 (B) (a).—We are averse to the abolition of the maximum limit for taxes on buildings and lands, but recognising that the existing limits, in so far as they are defined with reference to annual value, are too low, we have raised them. The liability of the owner for taxes on buildings has in the case of tenants in perpetuity, that is to say, occupancy tenants, been shifted on to such tenants, in accordance with what is believed to be universal practice.

Clause 62.—In deference to numerous objections we have provided that the period within which objections to new taxes may be lodged shall be increased from 14 to 30 days.

Clause 66.—We have made provision for the assessment of yearly taxes by the financial as well as by the calendar year,—an arrangement which will suit the requirements of many committees.

Clause 68.—The words which we have added will relieve the committee of the unnecessary obligation of giving notice of revision of assessment to persons whose taxes are reassessed at the old rates.

Clause 69.—The wording of the clause as framed was calculated to prejudice *bona fide* objections to assessment. We have altered the clause so as to confine its scope to defects of form.

Clause 77.—In this clause and in clause 78 we have made it clear that evasion of octroi is punishable whether it is the committee or a lessee of octroi that is defrauded. We have also made punishable the communication of false information no less than the refusal to communicate information.

Clause 84.—The addition made in the Bill as introduced to the proviso of sub-section (1) of section 52 of the existing Act is considered unnecessary, and has been struck out.

We have made provision in this clause and clause 86 for the cases of claims or refunds of taxes.

Clause 99.—The corresponding clause of the Bill as introduced provided that all communication pipes and fittings installed at the expense of a consumer of water should vest in the committee. This provision has met with considerable criticism, in deference to which we have omitted it.

We have also omitted clause 98 of the Bill as introduced as we are of opinion that the taking of water from unauthorized sources is a matter which should be regulated by bye-law under clause 188 (e) (vi).

Clause 110.—To the existing provision for the muzzling of dangerous dogs we have added a clause providing for a general muzzling order during a rabies scare.

Clause 113.—The alteration which we have made is designed only to remove an obscurity of meaning in the corresponding clause of the Bill as introduced.

Clause 121.—The clause as originally framed did not require licenses for premises used for dangerous or offensive trades other than for such premises as might be so used for the first time after the coming into force of this Act. The obligation to take out a license has however been operative since the Act of 1891 was passed, and the clause has accordingly been altered so as to maintain this obligation, only such premises being excepted as were already in use when the Act of 1891 came into force. Brickfields, on account of the danger to public health which arises from the collection of drainage water in their excavations, have been included in the list of dangerous trades, but only new brickfields will be subject to the license procedure.

Clause 122.—The Government of India having brought to notice the danger from fire arising from cinematograph performances, provision has been made for the licensing of premises for such performances and other dramatic performances generally.

Clause 152.—A mistake in punctuation has been corrected and the clause has been re-arranged so as to make it clear that the powers of the committee over disorderly houses and prostitutes do not extend to entire suppression and banishment, but only to the prevention of their location in particular parts of the municipality. *Clause 149* of the Bill as introduced which subjected to a penalty soliciting for purposes of prostitution has been struck out as unnecessary in the circumstances of this province.

Clause 157.—We desire to bring home to parents their responsibility for permitting the streets to be defiled by their children in the manner which is only too customary in many of our towns, and we have drafted a new clause aimed against this nuisance.

Clause 171.—The clause as framed was confined in its operation to private streets. In practice it is considered desirable that proprietors of buildings abutting on all unmetalled roads should bear the initial cost of metalling them even though they may be public streets within the definition, and we have provided accordingly.

Clause 77.—In the Bill as introduced and in Section 168 of the existing Act the extinguishing of a lamp in the street is an offence. We have added words to make the intention clear.

Clause 182.—The clause has been altered with a view to rendering it incumbent in all cases to obtain the sanction of the committee to the picketing of animals in the streets. The practice of tying up cattle in public thoroughfares is much too common and requires to be remedied.

Clause 183.—The majority of the committees prefer the provisions of Section 159 of the existing Act under which the obligation to provide lights for vehicles is dispensed with when there is sufficient moonlight to render lights unnecessary.

Clause 188.—In the opinion of the Select Committee, the powers conferred by the existing Act upon the committees of the hill municipalities to make bye-laws for the licensing of stables, cow-houses and enclosures for sheep and goats and for the regulation of the traffic in the streets should be general for all committees. We have provided accordingly. On the other hand, we have struck out the clause empowering committees to make bye-laws for the assessment and collection of the taxes, as this is a subject which is dealt with by rules made by the local Government.

Clause 189.—We have recast the provisions of the Bill on the subject of the regulation of buildings, and in conformity with universal practice have inserted in the Bill itself, instead of leaving the matter to be dealt with in bye-laws, the obligation to obtain sanction to the erection of building and to give notice of intention to build. The manner of the notice and the details to be furnished therewith are left for regulation by bye-law.

Clause 193.—In deference to the weight of opinion we have reduced from 3 months to 2 months the period within

which committees must decide whether to sanction or refuse to sanction an application for permission to erect a building.

We have also made it clear that the provision regarding refusal to sanction the erection of a building on the ground of the existence of a dispute as to title applies only to such dispute between the applicant and the committee itself.

Clause 223.—The explanation in the corresponding clause of the Bill as introduced to the effect that “information” included a police report has been omitted as unnecessary.

Clause 240.—As pointed out by the Accountant-General the explanation regarding the Municipal Account Code was misplaced in this clause. This we have remedied. We have added a provision which will enable the Deputy Commissioners if authorized by rules to initiate prosecutions for corrupt practices. We have borrowed a useful provision from the Cantonment Act of 1910, to enable Government to limit the scope and generality of its rules under this clause.

Clause 242.—A new proviso has been added to sub-clause (1), consequent upon the restoration in the taxation chapter of maximum limits for taxes on property. In the case of notified areas where no octroi is collected and annual values are as a rule very low it will often be necessary to impose house taxes at rates exceeding those permitted by clause 61 (B) (a).

There are several sections of the existing Act and of the Bill as introduced in which it is provided that the section will not apply to any municipality until it has been specially extended thereto by the local Government. In our opinion the time has now come for the exercise of powers under those sections by all committees without being specially authorized by local Government and we have accordingly omitted the following clauses and sub-clauses of the Bill as introduced:—

Clause 69 (4)—On the subject of the registration of titles to property.

Clause 91—On the subject of the prevention of fire.

Clause 148 (2)—On the subject of the control of disorderly houses.

Clause 183 (c)—On the subject of bye-laws relating to boundary walls and hedges.

Clause 192 (2) { —On the subject of the manufacture
and preparation and sale of food and
Clause 193 (3) { drink.

Many other minor amendments, the object of which is obvious, are included in italics in the annexed copy of the Bill.

The amendments now proposed do not in our opinion so alter the Bill as to require its republication.

The Bill was published in the *Punjab Gazette*, English and Urdu, on the 26th August 1910.

M. W. FENTON.

SULTAN SINGH.

A. MEREDITH.

HARI CHAND.*

R. HUMPHREYS.

KHWAJA YUSAF SHAH.†

C. G. PARSONS.

KHWAJA AHAD SHAH.‡

MUHAMMAD SHAFI.

SHADI LAL.§

The 8th March, 1911.

* I agree generally except with clauses 124 and 196 for the following reasons —

Clause 124 —In my opinion no written permission should be required to use steam whistle and steam trumpet for the purpose of summoning workmen and persons employed at factories, for the factory owners will suffer considerably if the permission is withheld by the commissioner.

Clause 196 —The clause as framed will operate very hardly on landowners in this country. To deprive an owner of land of the right to make use of it without paying compensation for the damage done to him will be very inequitable.

HARI CHAND.

† I entirely agree with the report except on one point, *viz.*—

I would like to add clause 189 to the clauses mentioned in clause 33 of the Bill which deals with delegation of certain powers and functions of committees to president, vice-president or a sub-committee, in order to make it really workable in large municipalities.

KHWAJA YUSAF SHAH.

‡ I cannot concur in the addition of the proviso proposed by the Select Committee to be added to clause 240 thereof, which runs thus —

"Provided that any tax imposed on buildings and lands shall not be subject to the maximum limits prescribed by Section 61 B (a)."

The addition of such a proviso is not justifiable for the following reasons.— (1) that the inhabitants of rural areas are not so well-to-do as the residents of large towns or cities are, (2) that it is essentially necessary to observe leniency in taxing the poorer classes, and (3) that there must be placed a maximum limit on the tax which should in no case exceed the one prescribed by clause B (a).

AHAD SHAH.

§ *Note of Dissent.*

I regret I am unable to agree with majority of the Select Committee with respect to some provisions of this Bill. The Bill practically reproduces the present Punjab Municipal Act XX of 1891, with certain minor alterations made in order to remove the defects discovered in the working of the Act. No new provisions have been added in order to make an advance in local self-government and thus to carry out the recommendations of the Decentralization Commission. I thought the Bill afforded an excellent opportunity for that purpose, but it has not been availed of. The few changes as regards matters of principle which have been made by the present Bill seem to me to go in the opposite direction and are not likely to advance local self-government.

The specific suggestions as to the clauses of the Bill are as follows —

Clause 12.—Proviso (a) of sub-section (2) of the Section 5 of the present Act should be re-enacted. It places restrictions on the power of the local Government to reduce the proportion of the elected members after it has been once fixed.

Clause 16 (b).—The wording as it stands at present will include those persons who may be dismissed from service for causes other than those involving moral defect.

Clause 20.—The words "and that the local Government may, by notification, exclude any committee from the operation of this sub-section" should be omitted. The provisions requiring the approval of the local Government or Commissioner to the election of the president is a sufficient safeguard

Clause 34.—I am opposed to this clause which is not to be found in the present Act. No case has been made out for this extraordinary provision.

Clause 40.—This clause should be omitted

Clause 41.—This is a retrograde step. It requires a municipal committee to dismiss its employe at the bidding of the Commissioner or the Deputy Commissioner. A similar provision existed in the Municipal Bill of 1884, but after consideration was omitted by the then Select Committee as undesirable and interfering with the powers of the municipal committee. I do not understand why a provision which was deliberately rejected in 1884 should be introduced in 1911. I consider the clause as objectionable.

Clause 42—This clause should be either omitted altogether or confined to the committees of the second class

Clause 122—The words "and no dramatic performance or pantomime" should be omitted from sub-section (1), and necessary amendment be made in sub-section 2.

Clause 124—This clause, in the interests of industry and trade, should be omitted

Clause 207—This clause is new and should be omitted. The provisions of the Indian Penal Code are sufficient for the object aimed at.

Clause 233—There is no necessity for giving this extraordinary power to the Deputy Commissioner, and the clause should be left out. In any case, provision should be made to the effect that the Deputy Commissioner should report his action to the committee

SHADI LAL

THE PUNJAB MUNICIPAL (AMENDMENT) ACT, 1923.

PUNJAB ACT II OF 1923.

(Received the assent of Governor on 28th March 1923 and that of the Governor-General on the 24th April 1923. It was fresh published on 4th May 1923.)

An Act to amend the Punjab Municipal Act, 1911.

WHEREAS it is expedient to amend the law relating to municipalities in the Punjab in the manner hereinafter appearing and WHEREAS the previous sanction of the Governor-General has been obtained under sub-section (3) of Section 80-A of the Government of India Act, IT IS HEREBY ENACTED as follows:—

Preamb

1. (1) This Act may be called the Punjab Municipal (Amendment) Act, 1923.

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(2) It shall come into force on such date as the local Government may by notification appoint in this behalf.

2. The sections referred to by number hereinafter mean the sections as so numbered in the Punjab Municipal Act, 1911, unless it appear to the contrary.

Number
sections.

3. (1) In clause (2) of Section 3 the words "the whole or any part of" shall be inserted between the word "means" and the word "any."

Amendm
of Section

(2) In clause (7) of the same section a comma followed by the word "tuberculosis" shall be inserted after the word "small pox."

(3) In clause (10) of the same section the words, figures, letters and brackets "Section 16-B (h) and" shall be omitted; for the word "chapter" the word "chapters" shall be substituted; and after the figure "V" the word and figures "and IX" shall be inserted.

(4) At the end of the same section the following new clauses shall be added, namely:—

"(15) 'Medical Officer of Health' shall include an Assistant Director of Public Health and such other person as the local Government may by notification appoint as Medical Officer of Health, and

"(16) 'factory' shall have the meaning assigned to it in the Indian Factories Act, 1911."

4. In Section 11 for the word "three" the word "five" shall be substituted.

Amendm
of Section

5. In the proviso to Section 12 the words "who are salaried officers of the Government" shall be omitted and for the words "one-third" shall be substituted the words "one-fourth."

Amendm
of Section

New section.

6. After Section 12, the following new section shall be inserted, namely:—

Oath of
allegiance.

“12-A. Notwithstanding anything contained in the Indian Oaths Act, 1873, every person who is elected or appointed to be a member of a municipal committee shall before taking his seat take or make, at a meeting of the said committee, an oath or affirmation of his allegiance to the Crown, in the following form, namely:—

“I, A. B., having been ^{elected}_{appointed} a member of this committee do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.”

“ Provided that—

“ (a) if any such person omits or refuses to take or make such oath or affirmation his election or appointment as the case may be shall be deemed to be invalid;

“ (b) in the case of such invalid election the person if any who obtained the next largest number of votes from amongst those who failed to secure election, shall be deemed to have been duly elected, or, if the election was uncontested, a fresh election shall be held, or in the case of such invalid appointment the local Government shall appoint another person in the manner prescribed in S. 12;

“ (c) no person whose election or appointment has been deemed to be invalid under this section shall be eligible for election or appointment to any committee for a period of two years from the date on which he ought to have taken or made such oath or affirmation.”

Amendment
of Section 16.

7. (1) In clause (c) of sub-section (1) of S. 16 between the word “ has ” and the word “ absented,” the words “ without reasonable cause in the opinion of the local Government ” shall be inserted.

(2) To the same sub-section shall be added the following proviso, namely:—

“ Provided that when the local Government proposes to take action under the foregoing provisions of this section an opportunity of explanation shall be given to the member concerned.”

8. For Section 19, the following section shall be substituted, namely:— Amendment
of Section 1

“19. Every officer or servant employed by the committee, whether for the whole or part of his time, and every member of the committee shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.” Office
servants and
members
be public
servants.

9. For sub-section (1) of Section 32 shall be substituted the following sub-section, namely— Amendment
of Section

“ (1) In the case of municipalities of the second class, the powers and functions of the local Government under Section 12 in regard to the appointment of members of committees, under clause (b) of Section 14, under Sections 15 and 17 and under sub-section (2) of Section 31, and, in the case of notified areas, the powers and functions of the local Government under Section 242 in regard to the appointment of members of committees may be delegated by the local Government to the Commissioner of the Division.”

10. In Section 33—

(1) Between the word “ delegate ” and the word “ to ” the brackets and letter “ (a) ” shall be inserted. Amendment
of Section

(2) Between the word “ vice-president ” and the word “ or ” the words “ the secretary ” shall be inserted.

(3) Between the figures 115 and the figures 117 the figures and letter 115-A and between the figures 118 and the figures 122, the figures 119 shall be inserted; for the letter (a) after the figures 16.), the letter (c) shall be substituted; between the figures 170 and the figures 173 the words, letters and figures “ sub-sections (1) and (2) of 170-A ” shall be inserted; between the figures 211 and the figures 212, the word “ and ” shall be omitted; between the figures 212 and the word “ in ” the word and figures “ and 220 ” shall be inserted.

(4) Between the figures “ 212 ” and the word “ in ” the following letters, words and figures shall be inserted, namely:—

“(b) the Medical Officer of Health, all or any of the powers conferred upon the committee under Sections 39, 105, 109, 113, 114, 115, 115-A, 116, 117, 118, 119, 125, 126, 128, 131, 142, 143, clauses (b) and (c) of 145, 149, 166, 203, 204, clause (b) of 205, 206, 208 and 211, and the powers conferred on the committee under Section 212 so far as they may

be applicable to the Civil Surgeon of the District or to any officer of the Department of Public Instruction all or any of the powers conferred upon the committee under Section 39”.

Amendment
Section 38.

11. In sub-section (2) of Section 38 for the word “pay” the word “remuneration” shall be substituted.

Amendment
Section 39.

12. In Section 39 for the word “pay” the word “remuneration” shall be substituted.

Amendment
Section 43.

13. In clause (b) of sub-section (2) of S. 43 for the word “ten” the word “twenty” shall be substituted.

Amendment
Section 44.

14. For sub-section (2) of Section 44 shall be substituted the following sub-section, namely :—

“(2) In the absence of a written contract to the contrary, the committee may dispense with the services of any such person by giving the local Government one month’s previous notice.”

Amendment
Section 55.

15. (1) In sub-section (1) of Section 55 after the word “India” shall be inserted a comma, and for the remaining portion of the sub-section shall be substituted the following words, namely :—“or invest it in such other securities or place it in such other manner as the local Government may approve in this behalf and with the previous sanction of the Commissioner vary such investment or placement for others of like nature.”

(2) In sub-section (2) of the same section the word “such” shall be substituted for the word “the” between the word “from” and the word “securities” and between the word “securities” and the word “and” shall be inserted the words “or placements.”

Alteration
Section 61.

16. For Section 61, the following section shall be substituted, namely :—

Taxes which
may be im-
posed.

“61. Subject to any general or special orders which the local Government may make in this behalf, and to the rules, any committee may, from time to time, for the purposes of this Act, and in the manner directed by this Act, impose in the whole or any part of the municipality any of the following taxes, namely :—

“(1) (a) A tax, payable by the owner, on buildings and lands—

“(i) not exceeding twelve-and-a-half per centum on the annual value;

“(ii) not exceeding in the municipalities of Simla, Dharamsala, Dalhousie and Murree, one anna and four pies, and elsewhere one anna, per square yard of the ground area; or

“(iii) not exceeding in the municipalities of Simla, Dharamsala, Dalhousie and Murree, four rupees, and elsewhere three rupees, per running foot of frontage in streets or *bazaars* :

“Provided that in the whole or any part of the municipality of Simla there may be imposed both a tax on buildings and a tax on lands :

“Provided further that in the case of lands and buildings occupied by tenants in perpetuity, the tax shall be payable by such tenants.

“(b) a tax on persons practising any profession or art or carrying on any trade or calling in the municipality ;

“(c) a tax, payable by the owner on all or any vehicles, animals used for riding, driving, draught or burden, and dogs, when such vehicles, animals used as aforesaid, and dogs are kept within the municipality ;

“(d) a tax, of the nature of a toll, on vehicles and animals used as aforesaid entering the municipality :

“Provided that—

“(i) no such tax shall be levied in respect of any vehicle or animal for which a tax is paid under clause (c),

“(ii) any owner of such vehicle or animal may compound for the tax by paying the corresponding tax under clause (c) if such tax is in force in the municipality ;

“(e) a tax, payable by the employer, on menial domestic servants ;

“(f) a tax, payable by the occupier of any building in respect of which the committee has, in exercise of the powers conferred by Sections 159 to 165 of this Act undertaken the house-scavenging:

“Provided that a committee shall not impose any tax without the previous sanction of the local Government when—

“(i) it consists of members less than three-fourths of whom have been elected, or

“(ii) its cash balances have, at any time within the three months preceding the date of the passing of the resolution imposing the tax, fallen below Rs. 20,000 or one-tenth of the income accrued

in the previous financial year whichever amount shall be less.

" (2) Save as provided in the foregoing clause, with the previous sanction of the local Government any other tax which under rules made under clause (a) of sub-section (3) of Section 80-A of the Government of India Act a local Government may be authorized to impose by any law made by the local legislature without the previous sanction of the Governor-General.

" (3) With the previous sanction of the local Government and of the Governor-General in Council, any tax."

Amendment
of section 62.

17. (1) In sub section (4) of Section 62 for the words "forward its proposal to the local Government, with the objections (if any) which have been submitted as aforesaid, and its decision thereupon" shall be substituted the following :—

" (a) in the case of a tax falling under clause (1) of Section 61, direct that the tax be imposed, and shall forward a copy of its order to that effect to the local Government ;

" (b) in the case of any other tax, forward its proposals to the local Government with the objections (if any) which have been submitted as aforesaid and its decision thereon."

(2) In sub-section (5) of the same section, for the word "such" the word "a" shall be substituted and between the word "proposal" and the word "may" the words "forwarded under clause (b) of sub-section (4)" shall be inserted.

(3) In sub-section (7) of the same section—

(a) for the words "When any proposal of a committee has been sanctioned by the local Government, or by the local Government and the Governor-General in Council as the case may be" shall be substituted the following words, namely :—

" (a) when a copy of an order under clause (a) of sub section (4) has been received ; or

" (b) when a proposal has been sanctioned under sub-section (5) or sub-section (6) " ;

(b) between the word "such" and the word "proposal" the words "order or" shall be inserted.

Amendment
of Section 68.

18. In Section 68 the words "for the whole or any part of the municipality" shall be inserted between the word "prepare" and the word "a".

19. In Section 74—

Amendment
of Section 74.

(1) in sub section (1) the words "and the transferee" shall be inserted between the word "transferer" and the word "shall".

(2) After sub-section (2) the following new sub-section shall be inserted, namely :—

"(3) Whenever the title to or over any building or land has devolved upon any person by inheritance, the heir shall within three months of the date of the death of the former owner give notice in writing of such inheritance to the committee."

(3) The brackets and figure "(4)" shall be substituted for the brackets and figure "(3)", and in the sub-section so renumbered the words "or heir" shall be inserted between the word "transferee" and the word "for".

20. In Section 76 between the word "octroi" and the word "limits" the words "or terminal tax" shall be inserted.

Amendment
of Section 76.

21. In sub-section (1) of Section 77 between the word "octroi" and the word "limits" the words "or terminal tax" should be inserted.

Amendment
of Section 77.

22. In Section 78—

Amendment
of Section 78.

(1) the brackets and figure "(1)" before the word "if" shall be omitted.

(2) for the word "goods" wherever it occurs the words "animals or articles" shall be substituted.

(3) between the words "the octroi" and the word "boundary" wherever they occur the words "or terminal tax" shall be inserted.

(4) sub-section (2) shall be omitted.

23. After Section 78, the following new sections shall be inserted, namely :—

New sections

"78.A. When a cantonment authority, with the sanction of the Governor-General in Council or any municipal committee or small towns committee has agreed with the committee of an adjoining municipality or small town that in consideration of the payment of a lump sum or otherwise the same octroi or terminal tax limits shall be established for the contracting parties the committee may fix limits under Section 188 so as to include so much of the area controlled by the said contracting parties as it may deem necessary, and shall have the same powers of collecting octroi or terminal tax on animals or articles brought within such limits ; and the provisions of this Act relating to

Extension
of taxation
limits by
agreement.

octroi and terminal tax shall apply in the same way as if the said limits were wholly comprised in the area of the municipality.

Taxation on
articles ex-
ported.

“78-B. When terminal tax is leviable on animals or articles conveyed out of the terminal tax limits the provisions of Sections 76, 77, 78 and 78-A shall be deemed, so far as may be, to apply in respect of the animals or articles so conveyed.”

Amendment
of Section 81.

24. (1) Section 81 shall be renumbered sub-section (1) of Section 81, and to it shall be added the following words, namely:—

“The costs of such proceedings shall be recoverable from the defaulter in the same manner as the said arrears.”

(2) To the same section shall be added the following sub-section, namely:—

“(2) An application made under sub-section (1) shall be in writing and shall be signed by the president, a vice-president or the secretary of the committee, but it shall not be necessary to present it in person.”

Alteration
of Section 96

25. For Section 96 the following shall be substituted, namely:—

Provision
of water

“96. (1) The committee may, and when the local Government so directs shall, provide the area under its control or any part thereof with a supply of wholesome water sufficient for public and domestic purposes.

“(2) For the purpose of providing such supply within the municipality the committee shall cause such tanks, reservoirs, engines, pipes, taps, and other works as may be necessary to be constructed or maintained, whether within or without the municipality; and shall erect sufficient stand-pipes or other conveniences for the gratuitous supply of water to the public.

“(3) When required by the Medical Officer of Health, the committee shall arrange for the examination of water supplied for human consumption for the purpose of determining whether the water is wholesome.”

Amendment
of Section
107.

26. (1) In sub section (1) of Section 107 the words “Civil Surgeon or” between the word “the” and the word “Health” shall be omitted and for the words “health officer” the words “Medical Officer of Health” shall be substituted.

(2) In sub-section (3) of the same section between the word "Act" and the word "without" the words "without a certificate from the Medical Officer of Health to be confirmed by a resolution of the committee that such burial or burning ground is not prejudicial to the public health or," shall be inserted.

27. In Section 115, between the word "owner" and the word "or" the word "part-owner" shall be inserted.

Ame:
of :
115.

28. After Section 115, the following new section shall be inserted, namely:—

New s

"115-A. The committee may by notice require the owner or occupier of any land on which cattle or other animals are habitually tethered to have the same properly paved or drained or both."

Pavi
drainn
cattle

29. In Section 120, the words "Sanitary Commissioner or the Civil Surgeon or," shall be omitted and for the words "health officer" the words "Medical Officer of Health" shall be substituted.

Ame:
of :
120

30. In sub-section (1) of Section 121—

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of
121.

(1) for the semi-colon after the word "tallow" shall be substituted a comma followed by the words "dressing raw hides".

(2) between the words "engine house" and the word "or" the word "store-house" shall be inserted and a comma shall be placed after the words "engine house".

(3) between the word "smells" and the word "noises" the word "gases" shall be inserted.

(4) between the words "trade in" and the word "hay" the words "unslaked lime" shall be inserted.

31. After Section 121, the following new section shall be inserted, namely:—

New

"121-A. (1) Within any municipality to which this section shall have been extended by the local Government no person shall use as a factory any place which has not previously been so used without having obtained the consent of the committee.

Com
comm
use
factor

(2) The consent of the committee may be given without condition or subject to the condition that the owner or user of the said factory shall provide adequate housing accommodation for labourers employed in the factory or for any proportion or class of such labourers;

"Provided that the consent of the committee shall not be withheld for any reason except the refusal of such owner or user to comply with such condition;

" Provided further that if the committee neglect or omit to give their consent within a period of two months from the date of application, such consent shall be deemed to have been given without condition."

amendment
Section **32.** In each sub-section of Section 122 between the word " dramatic " and the word " performance " the words " or circus " shall be inserted.

amendment
Section **33.** For sub-section (1) of Section 124 shall be substituted the following sub-section, namely:—

" (1) No person shall use or employ in any factory or other place any steam whistle or steam trumpet for the purpose of summoning or dismissing workmen or persons employed without the written permission of the committee in granting which the committee may impose such conditions as it may deem proper as to the times at which the whistle or trumpet may be used."

amendment
Section **34.** In sub-section (2) of Section 128 for the word " twenty " the word " fifty " shall be substituted.

amendment
Section **35.** (1) Section 135 shall be renumbered sub-section (1) of Section 135 and the following sub-section shall be added, namely:

" (2) any person acting in contravention of the terms of sub-section (1) shall be punishable with a fine not exceeding fifty rupees."

(2) In the same section the word " ferrule " shall be inserted between the word " pipe " and the word " drain".

amendment
Section **36.** In Section 136 the words " In municipalities to which the provisions of this section may at any time, by notification, be extended by the local Government " shall be omitted.

amendment
Section **37.** In sub-section (2) of Section 140 between the word " paved " and the word " with " the words " by the owner or part-owner of such building " shall be inserted and for the word " them " between the word " by " and the word " and " the words " the committee " shall be substituted.

amendment
Section **38.** In Section 141, between the word " fails " and the word " to " the word " forthwith " shall be inserted and between the word " to " and the word " or " the words " the Medical Officer of Health " shall be substituted for the words " to such officer as the committee may direct ".

amendment
Section **39.** In Section 145 for the words " In any municipality to which this section may be extended by the local Government, the committee may " the words " The committee may, and when the local Government so directs, shall " shall be substituted.

40. In Section 149 the words "civil surgeon or" between the word "the" and the word "health" shall be omitted and for the words "health officer" wherever they occur the words "Medical Officer of Health" shall be substituted.

Amend
of Sec
149.

41. At the end of Section 150 the following proviso shall be added, namely:—

Amend
of Sec
150

"Provided that this section shall not apply to those areas to which the local Government has directed or may direct that the Punjab Adulteration of Food Act, 1919, shall apply."

42. In Section 156, for the words "whoever, without the permission of the committee, or in disregard of its orders, throws or deposits or permits his servants or members of his household under his control to throw or deposit earth or materials of any description, or refuse, rubbish or offensive matter of any kind, upon any street or into any public sewer or drain or any drain communicating therewith" the following words shall be substituted, namely:—

Amend
of Sec
156.

"The occupier of any building or land from which any offensive matter, rubbish, nightsoil or carcase is thrown or deposited on any part of a public place or street or into any public sewer or drain or into any drain communicating with a public sewer or drain without the permission of the committee or in disobedience of its orders."

43. To Section 165, shall be added the following new sub-section, namely:—

Ame
of
165

"(3) should any sweeper (other than a customary sweeper) who is under contract to do the house-scavenging of a house or building discontinue to do such house-scavenging without having given 14 days' notice to his employer or without reasonable cause, he shall on conviction be punishable with a fine which may extend to ten rupees."

44. For Section 169, the following shall be substituted, namely:—

Al
of
169.

"169. The committee—

Pro
connec
with:

"(a) may lay out and make a new public street and construct tunnels and other works subsidiary thereto and

"(b) may widen, lengthen, extend, enlarge, raise or lower the level of or otherwise improve any existing public street vested in the committee, and

"(c) may close temporarily any public street or any part thereof for any public purpose, and

- “(d) may turn, divert, discontinue or close any public street so vested, and
- “(e) may provide within its discretion building sites of such dimensions as it deems fit, to abut on or adjoin any public street made, widened, lengthened, extended, enlarged, improved, or the level of which has been raised or lowered by the committee under clauses (a) and (b) or by the local Government, and
- “(f) subject to the provisions of any rule prescribing the conditions on which property may be acquired by the committee, may acquire any land along with the building thereon, which it deems necessary for the purpose of any scheme or work undertaken or projected in exercise of the powers conferred under the preceding clauses, and
- “(g) subject to the provisions of any rule prescribing the conditions on which property vested in the committee may be transferred, may lease, sell or otherwise dispose of any property acquired by the committee under clause (f), or any land used by the committee for a public street and no longer required therefor, and in doing so may impose any condition as to the removal of any building existing thereon, as to the description of any new building to be erected thereon, as to the period within which such new building shall be completed, and as to any other matter that it deems fit.”

sections.

45. After Section 170, the following new sections shall be added, namely :—

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es, erec-
or de-
ion of
ings.

“170-A. (1) No person shall cut down any trees or cut off a branch of any tree, or erect or demolish any building or part of a building, or alter or repair the outside of any building, where such action is of a nature to cause obstruction, danger or annoyance, or risk of obstruction, danger or annoyance, to any person using a street, without the previous permission in writing of the committee.

“(2) The committee may at any time by notice require that any person doing or proposing to do any of the acts referred to in sub-section (1) shall refrain from beginning or continuing the act unless he puts up, maintains and provides from sunset to sunrise with sufficient lighting such hoardings or screens as are specified or described in the notice and may further at any time by notice require the removal,

within a time to be specified in the notice, of any hoarding or screen erected in anticipation or in pursuance of any of the said acts.

“(3) Whoever contravenes the provisions of sub-section (1) or fails to comply with the terms of a notice under sub-section (2) shall be punishable with fine which may extend to fifty rupees and when the contravention or non-compliance is a continuing one with a further fine which may extend to five rupees for every day after the first during which the contravention or non-compliance continues.

“170-B. (1) No person shall lay out or make or commence to lay out or make a street without the sanction of the committee;

Notice to be given and sanction obtained before making a street.

“(2) Every person who intends to lay out or make a street shall give notice in writing to the committee of such intention;

“(3) Where a committee has issued an order under clause (b) of Section 170-C no notice under sub-section (2) shall be deemed to be valid until the particulars required under such order have been furnished to the satisfaction of the committee.

“170-C. The committee may, within one month of the receipt of the notice required by sub-section (2) of Section 170-B, issue—

Order of committee on notice being given under Section 170-B.

“(a) an order directing that for a period therein specified, which shall not be longer than one month from the date of such order the intended work shall not be proceeded with, or

“(b) an order requiring further particulars.

“170-D. Within two months after the receipt of the notice required by sub-section (2) of Section 170-B, the committee may refuse to sanction the proposed street, or may sanction it either absolutely or subject to such written directions as to level, metalling, paving, means of drainage, direction and width as the committee may deem fit to issue, and the person laying out or making such street shall comply with the sanction of the committee in every particular:

Sanction of committee with regard to new street.

“Provided that should the committee neglect or omit for two months after the receipt of such notice, or if an order has been issued under clause (b) of Section 170-C, fail within the period specified in such order, to make and deliver to the person who has given such notice an order of sanction or refusal in respect thereof, it shall be deemed to have sanctioned the proposed street absolutely.

Duration of
sanction.

"170-E. Every sanction for the laying out or making of a street which shall be given, or be deemed to have been given, by a committee, shall remain in force for one year only from the date of such sanction. Should the laying out or making of the street not have been commenced within the said period of one year, the sanction shall be deemed to have lapsed; but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of this Act.

"Explanation.—A street shall be deemed to be made or laid out when it is demarcated on the ground by permanent boundary-marks.

Penalty.

"170-F. Whoever begins, continues or completes the laying out or making of a street without giving the notice required by Section 170-B or in contravention of any written directions made under Section 170-D, or of any bye-law or provision of this Act, shall be liable to a fine which may extend to five hundred rupees.

Notice to
owner of land
under street,

"170-G. In any case where the committee considers that any land is being or has been laid out as a street without the notice required by Section 170-B, having been given or in contravention of any written direction made by the committee under Section 170-B, or of any bye-law or provision of this Act, the committee may, by notice in writing, require the owner of the land to alter the street in such manner as it deems necessary and the owner or occupier of any building which is being or has been built on or along the street to alter or demolish such building."

Amendment
of Section
172.

46. In sub section (1) of Section 172, the word "any" shall be substituted for the word "a" between the word "at" and the word "point".

Amendment
of Section
173.

47. (1) In clause (c) of sub-section (1) of Section 173 between the word "deposits" and the word "building" shall be inserted the words "or causes to be deposited".

(2) Between the word "subsidence" in clause (d) of the same sub section and the word "shall" shall be inserted a new clause (e), namely:—

"(e) erects or sets up any fence, post, stall or scaffolding in any public street."

(3) In clause (i) of sub-section (2) of the same section between the word "police" and the word "any" the words "or any other agency" and after the word "merchandise" the words "and any such fence, post, stall or scaffolding" shall be inserted.

(4) In clause (ii) of the same sub-section the words "and the expense of such restoration shall be recoverable from the offender" shall be omitted.

(5) To the same sub-section shall be added the word "and" and the following new clause, namely:—

"(iii) recover the expenses incurred by the committee under this sub-section from the offender."

48. Section 183 shall be renumbered sub section (1) of Section 183, and the following sub-section shall be added, namely:— Amendment
of Section
183.

"(2) Whoever, in driving, leading or propelling a vehicle along a street, fails without reasonable excuse—

"(a) to keep to the left, or

"(b) where he is passing a vehicle going in the same direction, to keep to the right of that vehicle, shall be liable to a fine which may extend to twenty rupees."

"*Exception.*—This sub-section shall not apply to a municipality wholly or in part situated in a hilly tract."

49. (1) The brackets and figure "(1)" prefixed to Section 183 shall be omitted. Amendment
of Section
188.

(2) In clause (d) of the same section the following new sub-clause shall be inserted after sub-clause (iii), namely:—

"(iv) for the scavenging, removal and disposal of all rubbish, filth, nightsoil, sullage or sewage in such buildings."

(3) In the same clause, sub-clauses, (iv) and (v) shall be renumbered (v) and (vi), respectively.

(4) In sub-clause (c) of the same section a comma shall be inserted after the words "flour mills" followed by the words "food grain godowns, dispensing chemist's shop".

(5) To the same clause shall be added the following new sub-clause, namely:—

"(vii) for the licensing, inspection and proper regulation of theatres and other places of public resort, recreation or amusement."

(6) In clause (g) of the same section for the words "goods or animals" the words "animals or articles" shall be substituted, and the words "or exported therefrom" shall be added after the word "municipality".

(7) In clause (h) of the same section the word "or" between the word "sheep" and the word "goats" shall be omitted, and after the word "goats" shall be added the words "or swine, and regulate the grant and withdrawal of such licenses".

(8) After clause (s) of the same section shall be inserted the following new clauses, namely:—

"(t) render licenses necessary for hand-carts used for hawking articles for sale;

"(u) regulate the conditions on which permission may be given under sub-section (1) of Section 173 and provide for the levy of fees and rent for such permission, and".

(9) Clause (v) of the same section shall be relettered (v).

Amendment
of Section
189.

50. To sub-section (3) of Section 189, the following new clause shall be added, namely:—

"(c) where the building appears likely to be used as a factory, require the provision of adequate housing accommodation in connection therewith."

Amendment
of Section
190.

51. (1) In clause (f) of Section 190 the word "and" after the word "consist" shall be omitted.

(2) In clause (g) of the same section, for the full stop after the word "fire" shall be substituted a semi-colon followed by the word "and" and the following new sub-section, namely:—

"(h) for godowns intended for the storage of food-grains in excess of fifty maunds, the materials and method of construction to be used in order to render them rat-proof."

Amendment
of Section
193.

52. (1) In Section 193 between the word "committee" and the word "neglect" the words "in any case except that in which notice has been given of an intention to build upon land belonging to the committee" shall be inserted.

(2) In the Explanation to the same section for the words "either on grounds affecting the particular building or in pursuance of a general scheme sanctioned by the Commissioner restricting the erection or re-erection of buildings or any class of buildings within specified limits for the prevention of overcrowding, or in the interests of the residents within such limits or for any other public purpose. Permission may also be refused in any case in which" shall be substituted the following, namely:—

"(i) for any reason, it may deem to be just and sufficient as affecting the said building, or

“(ii) in pursuance of a general scheme sanctioned by the Commissioner restricting the erection or re-erection of buildings or any class of buildings—

“(a) for the prevention of overcrowding, or

“(b) in the interests of the residents within such limits, or

“(c) in the interests of the public generally, or

“(d) for any other public purpose.

The committee may also refuse permission if ”.

53 In Section 195 for the words “ a reasonable time ” between the word “ within ” and the word “ require ” the words “ six months ” shall be substituted.

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195

54. After Section 195 shall be added the following new section, namely:—

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“195 A. (1) Where a building is begun as described in Section 195 but not completed, the committee may within six months by notice require the building operations to be discontinued from the date of the service of such notice.

“(2) Any person failing to comply with the terms of such notice shall be punishable with a fine which may extend to one thousand rupees and when the non-compliance is a continuing one, with a further fine which may extend to fifty rupees for every day after the first during which the non-compliance continues.”

55. (1) In clause (a) of Section 197 between the word “ manufacture ” and the word “ or ” shall be inserted a comma followed by the word “ sale ” and between the word “ preparatlon ” and the word “ for ” shall be inserted the words “ or exposure ”.

Am
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197.

(2) Clauses (b) and (d) of the same section shall be omitted, and clauses (c), (e), (f) and (g) shall be re-lettered (b), (c), (d) and (e) respectively:

(3) In clauses (e) and (f) of the same section, now re-lettered (c) and (d), respectively, between the word “ milk ” and the word “ butter ” in each clause the word “ and ” shall be omitted, and after the word “ butter ” in each clause shall be inserted a comma followed by the words “ ghi, curd, meat, game, fish and poultry ”.

(4) For clause (g) of the same section now re-lettered (e) the following shall be substituted, namely, “ make regulations for the grant and withdrawal of licenses and the levying of fees therefor under this section.”

(5) In the proviso to the same section the words and letter "or clause (d)" between the words and letter "clause (a)" and the word "of" shall be omitted.

(6) To the same section shall be added the following additional proviso, namely:—

"Provided further that nothing herein contained shall affect the operation of Section 43 of the Punjab Laws Act, 1872; and the rules made thereunder."

section. **56.** After Section 197 shall be added the following new section, namely:—

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session
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birds
nimals. "197-A. No wild bird or animal in respect of which any close time has been notified by the local Government under Section 3 of the Wild Birds and Animals Protection Act, 1912, shall whether dead or alive be possessed or sold during such close time within any municipality; and no such bird or animal shall at any other time be sold within any municipality except under an annual license to be granted by the committee: provided that these prohibitions shall not extend to wild birds or animals possessed or sold as pets."

ndment
Section **57.** In Section 208 for the words "health officer" the words "Medical Officer of Health" shall be substituted, and the brackets and figure "(1)" after the figures "188" shall be omitted.

58. (1) In sub-section (1) of Section 215 between the words "behalf and" and the word "may" the words "every such notice and every order made under Section 193" shall be inserted.

(2) To the same sub section the following proviso shall be added, namely:—

"Provided that such notice may be signed by the Medical Officer of Health when it is issued by the committee under any section of this Act under which power may be delegated to the Medical Officer of Health under clause (b) of Section 33 and has been so delegated."

ection. **59.** After Section 219 the following new section shall be inserted, namely:—

spensa-
r dam- "219-A. Every person convicted of an offence under this Act on account of any act or omission, shall, notwithstanding any punishment to which he may have been sentenced for such offence, pay compensation, the amount of which shall be determined by the Magistrate before whom he was so convicted, to the committee for any damage that may have occurred to any property of the committee, in consequence of such act or omission."

60. In Section 221 the words " one hundred " shall be substituted for the word " fifty ".

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221.

61. To Section 222 the following new sub section shall be added, namely:—

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222.

" (6) Where under Section 113 or Section 114 the committee has executed any work, the cost thereof may be recovered from the owner or occupier in connection with work done under Section 113, and from the owner in connection with work done under Section 114, in the manner herein provided for the recovery of the cost of work from a defaulting owner or occupier and subject to the provisions herein contained."

62. In sub-section (1) of Section 223 between the word " receiving " and the words " the rent " shall be inserted a comma followed by the words " or being entitled to receive", and for the words " or of his being as agent or trustee the person who would receive the rent if the property were let to a tenant " between the word " trustee " and the words " would under " shall be substituted the words " of a person or society " and between the word " property " and the word " for " the word " and " shall be omitted.

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223.

63. In sub-section (2) of Section 224 between the word " to " and the word " any " the words " or in respect of " shall be inserted.

Amen
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224.

64. In clause (c) of sub-section (1) of Section 225 for the word " or " shall be substituted a comma followed by the figures " 121 " and a comma, and for the comma after the figures " 123 " shall be substituted the word and figures " or 124 ".

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225

65. In the Explanation to Section 228 between the word " vice-president " and the word " or " the words " Medical Officer of Health " shall be inserted.

Amen
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228.

66. In sub-section (1) of Section 229 between the word " vice-president " and the word " or " a comma followed by the words " Medical Officer of Health " shall be inserted.

Amen
of t
229.

67. (1) In sub-section (1) of Section 240 for the words " for which it considers that a form should be provided and may make rules consistent with this Act," the words " and may make any rules consistent with this Act to carry out the purposes thereof and in particular and without prejudice to the generality of the foregoing power may make rules " shall be substituted.

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240.

(2) For clause (u) of the same sub-section the following clause shall be substituted, namely:—

“ (n) as to the procedure to be observed for the employment, punishment, suspension or removal of officers and servants of the committee and as to appeal from orders of punishment or removal.”

(3) In clause (s) of the same sub-section for the word “ goods ” wherever it occurs the words “ animals or articles ” shall be substituted.

Amendment
Section

68. In the proviso to clause (a) of sub-section (1) of Section 242 for the figures, letters and brackets “ 61-B (a) ” shall be substituted the words, figures, letters and brackets “ sub-clause (a) of clause (1) of Section 61.”

THE PUNJAB MUNICIPAL AMENDMENT ACT, 1925.

THE PUNJAB ACT, I OF 1925.

[Received the assent of the Governor on the 22nd March, 1925,
and that of the Governor-General on the 5th April, 1925.]

An Act further to amend the Punjab Municipal Act, 1911.

WHEREAS it is necessary and expedient further to amend the Punjab Municipal Act, 1911, in the manner hereinafter appearing, and WHEREAS the previous sanction of the Governor-General under sub-section (3) of Section 80-A of the Government of India Act has been obtained, IT IS HEREBY ENACTED AS FOLLOWS:—

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1. (1) This Act may be called the Punjab Municipal (Amendment) Act, 1925.

Short
and
concise

(2) It shall come into force on such date as the local Government may by notification appoint in this behalf.

2. In Section 4 of the Punjab Municipal Act, 1911 (hereinafter referred to as the said Act),—

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(i) for sub-section (1) the following sub-section shall be substituted, namely:—

“(1) The local Government may by notification propose any local area to be a municipality under this Act:

“Provided that no military cantonment or part of a military cantonment shall, without the consent of the Governor-General in Council, be included in any such area.”

(ii) after sub-section (7) the following new sub-sections shall be inserted, namely:—

“(7-a) When a local area, the whole or part of which was a notified area under this Act, is declared to be a municipality under this section the municipal committee shall be deemed to be the perpetual successor of such notified area committee in respect of all its rules, bye-laws, taxes and all other matters whatsoever.

“(7-b) When a local area, the whole or part of which was a small town under the Punjab Small Towns Act, 1921, is declared to be a municipality under this section, the municipal committee shall be deemed to be the perpetual successor of such small town committee in respect of all its rules, bye-laws, taxes and all other matters whatsoever.”

Amendment
of Section 61
of the Punjab
Municipal
Act, 1911.

3. To sub-clause (b) of clause (1) of Section 61 of the said Act the following Explanation shall be added, namely:—

“*Explanation.*—A Government official or person holding an office under the local Government or the Government of India or a local authority shall be deemed to be practising a profession within the meaning of this sub-clause.”

Amendment
of Section 70
of the Punjab
Municipal
Act, 1911.

4. In clause (a) of sub-section (2) of Section 70 of the said Act for the words, letters and brackets “under clause (B) (f)” the words, figures, letters and brackets “under sub-clauses, (c), (d) and (e) of clause (1) and under clauses (2) and (3)” shall be substituted.

Amendment
of Section 72
of the Punjab
Municipal
Act, 1911.

5. In sub-section (1) of Section 72 of the said Act for the words, figures, letters and brackets “Section 61, division (B), clause (a) or (h)” the words, figures, letters and brackets “sub-clause (a) of clause (1) of Section 61” shall be substituted.

Amendment
of Section
38 of the
Punjab Mu-
nicipal Act,
1911.

6. In Section 188 of the said Act, —

(i) to clause (t) the following words shall be added, namely:

“and prescribe the conditions for the grant and revocation of such licenses.”

(ii) for clause (u) the following clause shall be substituted, namely:—

“(u) regulate the conditions on which and the periods for which permission may be given under sub-section (1) of Section 172 and sub-section (1) of Section 173, and provide for the levy of fees and rents for such permission; and ”

Amendment
of Section
40 of the
Punjab Mu-
nicipal Act,
1911.

7. In Section 240 of said Act,—

(i) for sub-section (2) the following sub-section shall be substituted, namely:—

“(2) Rules under clause (g) of sub-section (i) may among other matters provide—

“(i) for the definition of the practices at elections held under the provisions of this Act which are to be deemed to be corrupt;

“(ii) for the investigation of allegations of corrupt practices;

“(iii) for making void the election of any person proved to the satisfaction of the local Government in the case of a municipality of the first class, or of the Commissioner in the case of a municipality of the second class, to have been guilty

of a corrupt practice or to have connived at or abetted the commission of a corrupt practice or whose agent has been so proved guilty, or the result of whose election has been materially affected by the breach of any law or rule for the time being in force ;

“(iv) for rendering incapable of municipal office either permanently or for a term of years any person who may have been proved guilty as aforesaid of a corrupt practice or of conniving at or abetting the same ;

“(v) for prescribing the authority by which questions relating to the matters referred to in clauses (d), (e), and (f) of sub-section (1) shall be determined ; and

“(vi) for authorizing courts to take cognizance of the breach of any such rules on the complaint of the Deputy Commissioner or some person authorised in writing by the Deputy Commissioner.”

(ii) in sub-section (4) for the word, brackets and letter “ clause (r) ” the word, brackets and letters “ clauses (m) and (r) ” shall be substituted, and for the word “ fifty ” the words “ five hundred ” shall be substituted.

8. Section 8 adding S. 240-A has been repealed by Amendment Act, III of 1933.

9. In clause (a) of sub-section (1) of Section 242 of the said Act between the words “ notified area ” and the words “ any tax ” the words “ without the previous sanction of the Governor-General in Council ” shall be inserted and after the word “ committee ” the words “ under the provisions of Section 61 whether with or without such sanction ” shall be inserted.

Note.—This amendment has been rendered necessary by the ruling of the Lahore High Court reported in 4 L. 442 (=A.I.R. 1924 Lah. 361, F. B. The above decision of the High Court becomes now obsolete.

10. In Section 244 of the said Act for the figures “ 240 ” the figures “ 241 ” shall be substituted.

11. In Section 245 of the said Act to the opening words shall be prefixed the following words, figures, letter and brackets, namely:—

“ Save as provided in sub-section (7-a) of Section 4 of this Act.”

12. The amendments made in the said Act by Sections 2 and 11 shall have effect as if they had been made on the first day of October 1911, and the amendments made by Sections 3 and 9 shall have effect as if they had been made on the ninth day of May 1923,

Amendment
of S.
242 of
Punjab
Municipal
1911.

Amendment
of S.
244.

Amendment
of S.
245 of
Punjab
Municipal
1911.

Retrospective effect

THE PUNJAB MUNICIPAL AMENDMENT ACT, 1926.

THE PUNJAB ACT, XV OF 1926.

[Received the assent of the Governor on the 25th October 1926 and of the Governor-General on 26th November 1926 and was published in the Punjab Gazette of 10th December 1926.]

An Act to amend the Punjab Municipal Act, 1911.

Preamble.

WHEREAS it is expedient to amend the Punjab Municipal Act, 1911, in the manner hereinafter appearing, IT IS HEREBY ENACTED AS follows:—

Short title.

1. This Act may be called the Punjab Municipal (Amendment) Act, 1926.

Amendment
Section 3
the Punjab
Municipal
Act, 1911.

2. In Section 3 of the Punjab Municipal Act, 1911 (hereinafter referred to as the said Act) after clause (4) the following new clause shall be inserted, namely:—

“(4a) ‘Deputy Commissioner’ includes any officer or officers at any time appointed by the local Government to perform in any local area the functions of a Deputy Commissioner under this Act.”

Amendment
Section 93
the Punjab
Municipal
Act, 1911

3. In Section 93 of the said Act, between the words “the committee may” and the word “establish” the following words shall be inserted, namely:—

“and if the local Government so directs, shall”.

Amendment
Section 94
the Punjab
Municipal
Act, 1911.

4. In the sub-section (1) of Section 94 of the said Act the brackets and words “(if directed so to do by a Magistrate or the Secretary or a member of committee)” shall be omitted, and for the words “above the rank of constable” the words “not below the rank of Sub-Inspector” shall be substituted.

Amendment
Section
of the
Punjab Mu-
nicipal Act,
1911.

5. In Section 188 of the said Act—

(i) in clause (b) for the words “and the loads to be carried by such conveyances, animals, or persons when hired within the municipality for a period not exceeding twenty-four hours, or for a service which would ordinarily be performed within twenty-four hours” the following words shall be substituted, namely:—

“and limit the load which may be carried by any carriage, cart, or other conveyance, plying for hire, within the limits of the municipality.”

(ii) after sub-clause (vii) of clause (e) the following new sub-clause shall be added, namely:—

“(viii) for the inspection and proper regulation of channels which are supplied with water from any canal to which either the Northern India Canals and Drainage Act, 1873, or the Punjab Minor Canals Act, 1905, applies.”

6. In Section 195 of the said Act, for the words “within six months” the following words shall be substituted, namely:—

Amendmer
of Section
195 of th
Punjab Mu
nicipal Ac
1911

“to the owner within 6 months from the commencement of the building or from the contravention of the terms of any sanction, or of any bye-law framed under Section 190, as the case may be.”

7. In Section 195-A of the said Act, for the words “within six months by notice” the following words shall be substituted, namely:—

Amendmer
of Section
195-A of th
Punjab Mu
nicipal Ac
1911.

“by notice, to be delivered to the owner within six months from the commencement of the building, or from the contravention of the terms of any sanction, or of any bye law framed under Section 190, as the case may be.”

8. At the end of sub-section (1) of Section 231 of the said Act the following proviso shall be added, namely:—

Amendmer
of Section
231 of th
Punjab Mu
nicipal Ac
1911.

“Provided that the powers of a Commissioner or Deputy Commissioner under clause (a) may be exercised by any other officer or officers empowered by the local Government in this behalf by a general or special order.”

9. After clause (g) of Section 240 of the said Act the following new clause shall be inserted, namely:—

Amendmer
of Section
240 of th
Punjab Mu
nicipal Ac
1911

“(gg) for the regulation of contracts with electric supply companies for the supply of electrical energy.”

THE PUNJAB MUNICIPAL AND SMALL TOWNS AMENDING ACT, 1929.

THE PUNJAB ACT OF 1929.

[Received the assent of His Excellency the Governor on the 30th July 1929 and that of His Excellency the Viceroy and Acting Governor General on the 24th August 1929 and was first published in the Punjab Gazette Extraordinary of the 31st August 1929.]

An Act further to amend the Punjab Municipal Act, 1911, and the Punjab Small Towns Act, 1921.

Preamble
III of 1911
II of 1921

WHEREAS it is expedient further to amend the Punjab Municipal Act, 1911, and the Punjab Small Towns Act, 1921 in the manner hereinafter appearing, IT IS HEREBY ENACTED as follows:—

Short title

1. This Act may be called the Punjab Municipal and Small Towns Amending Act, 1929.

Amendment
of Punjab
Act, III of
1911

2. In Section 4 of the Punjab Municipal Act, 1911—

(i) in sub-section (7a) the following words and figures shall be added at the end, namely:—

“and the notified area committee shall continue in office, and shall, notwithstanding any thing contained in this Act, be deemed to be the municipal committee, until the appointment and election of members is notified by the local Government under Section 12. ”

(ii) in sub-section (7b) the following words and figures shall be added at the end, namely:—

“and the small town committee shall continue in office, and shall, notwithstanding anything contained in this Act, be deemed to be the municipal committee, until the appointment and election of members is notified by the local Government under Section 12. ”

3. In the Punjab Small Towns Act, 1921:—

Amendment
of Punjab
Small Towns
Act 1921

(i) after sub-section (4) of Section 3, the following new sub-section shall be inserted, namely:—

“ (5) The local Government may at any time cancel or modify any notification issued under this section. ”

(ii) after sub-section (3) of Section 4, the following new sub-sections shall be inserted, namely:—

“ (4) When a local area, the whole or part of which was notified area, under the Punjab

Municipal Act, 1911, is declared to be a small town under Section 3, the notified area committee shall continue in office, and shall notwithstanding anything contained in this Act, be deemed to be the small town committee, until the appointment and election of members is notified by the Commissioner in the *Gazette* under sub-section (3).

- “ (5) The local Government may at any time cancel or modify any notification issued under this section.
- “ (6) The Commissioner may at any time cancel or modify any notification issued under sub-section (3).”

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THE PUNJAB MUNICIPAL AMENDMENT ACT, 1933.

THE PUNJAB ACT, III OF 1933.

[Received the assent of His Excellency the Governor on the 9th April 1933, and that of His Excellency the Viceroy and Governor-General on the 27th May, 1933, and was first published in the Punjab Gazette of the 16th June 1933.]

An Act further to amend the Punjab Municipal Act, 1911.

Preamble

WHEREAS it is expedient further to amend the Punjab Municipal Act, 1911, for the purpose and in the manner hereinafter appearing, and WHEREAS the previous sanction of the Governor-General, under sub-section (3) of Section 80-A of the Government of India Act, has been obtained, IT IS HEREBY ENACTED as follows:—

Short title
and com-
mencement,

1. (1) This Act may be called the Punjab Municipal (Amendment) Act, 1933.

(2) It shall come into force on such date as the local Government may by notification appoint in this behalf.

Amendment
of Section 1
of the Punjab
Municipal
Act, 1911.

2. In clause (2) of Section 1 of the Punjab Municipal Act, 1911 (hereinafter referred to as the said Act), for the word "Lieutenant-Governor" the word "Government" shall be substituted.

Amendment
of Section 3
of the Punjab
Municipal
Act, 1911.

3. In Section 3 of the said Act—

(i) for clause (2) the following clause shall be substituted, namely:—

"(2) 'building' means any shop, house, hut, outhouse, shed or stable, whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever; and includes a wall and a well."

(ii) after clause (2), the following new clause shall be inserted:—

"(2a) 'building line' means a line beyond which the outer face or any part of an external wall of a building may not project in the direction of any street, existing or proposed:"

(iii) for clause (4a), the following clauses shall be substituted, namely:—

"(4a) 'Deputy Commissioner' or 'Deputy Commissioner of the district' includes Additional Deputy Commissioner, Joint Deputy Commissioner or any person or persons at any time appointed by the local Government to perform in any district or districts the functions of a Deputy Commissioner under this Act;

“ Provided that no official shall be so appointed unless he has for three years exercised the powers of a magistrate of the first class.

“(4b) ‘ Commissioner ’ or ‘ Commissioner of the division ’ includes Additional Commissioner, Joint Commissioner or any person or persons at any time appointed by the local Government to perform in any division or divisions the functions of a Commissioner under this Act :

“ Provided that no official shall be so appointed unless he has for five years exercised the powers of a magistrate of the first class.”

(iv) for clause (3), the following clause shall be substituted, namely:—

“(13) (a) ‘ Street ’ shall mean any road, foot-way, square, court, alley, or passage, accessible, whether permanently or temporarily, to the public, and whether a thoroughfare or not ;

“and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings abut thereon, and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such persons be occupiers of such buildings or not, but shall not include any part of such space which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid :

“ and shall include also the drains or gutters therein, or on either side, and the land, whether covered or not by any pavement, verandah or other erection, up to the boundary of any abutting property not accessible to the public :

“(b) ‘ public street ’ shall mean any street, -

“(i) heretofore levelled, paved, metalled, channelled, sewered or repaired out of municipal or other public funds, unless before such work was carried out there was an agreement with the proprietor that the street should not thereby become a public street, or unless such work was done without the implied or express consent of the proprietor ; or

“(ii) which, under the provisions of Section 171, is declared by the committee to be, or under *any other provision of this Act becomes, a public street: ”*

(v) for clause (15), the following clause shall be substituted, namely:—

“(15) ‘Medical Officer of Health’ means such person as the committee has appointed Medical Officer of Health, or such person as the local Government may by notification appoint Medical Officer of Health, or, failing such appointment, the District Medical Officer of Health.”

(vi) after clause (16), the following new clauses shall be inserted, namely:—

“(17) ‘public place’ means a space which is open to the use or enjoyment of the public, whether or not private property and whether or not vested in the committee.

“(18) (a) ‘built area’ is that portion of a municipality of which the greater part has been developed as a business or residential area.

“(b) ‘unbuilt area’ is an area within the municipal limits which is declared to be such at a special meeting of the committee by a resolution confirmed by the local Government, or which is notified as such by the local Government.”

4. Section 12-A shall be omitted.

5. In Section 13 of the said Act—

(i) For sub-section (1) the following sub section shall be substituted, namely:—

“(1) If a member of committee is appointed by office, the person for the time being holding the office shall be a member of the committee until the local Government shall otherwise direct, or until there has been issued a notification of elections after a general election.”

(ii) After sub-section (4) the following sub-section shall be added as sub-section (5), namely:—

“(5) When as the result of an enquiry held under Chapter XIV an order declaring the election of any member void has been notified, such member shall forthwith cease to be a member of the committee.”

6. For Section 15 of the said Act, the following section shall be substituted, namely:—

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of Punjab
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1911

Amendment
Section 13
Punjab
Municipal
1911

Revision of
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“ 15. If a member of a committee wishes to resign his office he shall submit an application in writing through the Deputy Commissioner to the local Government. If such resignation is accepted, it shall be notified in the gazette on a date not less than 15 days and not more than 60 days after the receipt of the said member's application by the Deputy Commissioner whereupon the member shall be deemed to have vacated his seat:

Resignation
of member
committee

“ Provided that if a member who has submitted an application to resign wishes to withdraw his resignation he may apply to the Deputy Commissioner within 15 days of the receipt by the Deputy Commissioner of his application to resign, and the application to resign shall then be deemed to have been withdrawn.”

7. (1) In sub-section (1) of Section 16 of the said Act—

Amendment
of Section
of the Punjab
Municipal
Act, 1911

(i) for sub clause (e) the following sub-clause shall be substituted, namely:—

“(e) if, in the opinion of the local Government, he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee.”

(ii) sub-clause (f) shall be omitted and sub-clause (g) relettered sub-clause (f);

(iii) in the same sub-section between clause (g), as relettered (f) and the proviso the following clause shall be inserted, namely:—

“(g) if, being a legal practitioner, he acts or appears in any legal proceeding on behalf of any person against the committee, or on behalf of or against the Crown or the Secretary of State for India in Council where in the opinion of the local Government such action or appearance is contrary to the interests of the committee:”

(iv) for the proviso to the same sub-section the following proviso shall be substituted, namely: —

“ Provided that before the local Government notifies the removal of a member under this section the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing: and

(2) For sub-section (2) of the same section the following sub-section shall be substituted, namely:—

“(2) A person removed under this section or whose seat has been vacated under the provisions of Section 14 (e) or whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of Section 24, or whose election has been declared void for corrupt practices or intimidation under the provisions of Section 255, or whose election the local Government has under Section 24 refused to notify, shall be disqualified for election for a period not exceeding five years:

“Provided that a person whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of Section 24, shall not be disqualified for election or appointment for a period exceeding two years from the date of disqualification.”

8. In sub-section (1) of Section 17 of the said Act between the words “elected member” and the words “a new member” the words “or by the vacation of his seat under the provisions of sub-section (5) of Section 13,” shall be inserted.

9. For section 22 of the said Act, the following section shall be substituted, namely:—

“22. Whenever a president or vice-president vacates his seat or tenders in writing to the committee his resignation of his office, he shall vacate his office; and any president or vice-president may be removed from office by the local Government on the ground of abuse of his powers or of habitual failure to perform his duties or in pursuance of a resolution requesting his removal passed by two-thirds of the members of the committee:

“Provided that before the local Government notifies his removal, the reason for his proposed removal shall be communicated to him by means of a registered letter in which he shall be invited to tender within twenty one days an explanation in writing, and, if no such explanation is received in the office of the Secretary, Transferred Departments, within twenty-one days of the despatch of the said registered letter, the local Government may proceed to notify his removal.”

10. For Section 24 of the said Act the following section shall be substituted, namely:—

Amendment
of Section 17
of the Punjab
Municipal
Act, 1911.

Substitution
of a new sec-
tion for Sec-
tion 22 of the
Punjab Mu-
nicipal Act,
1911.

Resignation
of President
or Vice-Pres-
ident

Substitution
of a new sec-
tion for Sec-
tion 24 of the
Punjab Mu-
nicipal Act,
1911.

" 24. (1) Every election and appointment of a member or president of a committee shall be notified, in the case of a municipality of the first class, by the local Government, and in the case of a municipality of the second class, by the Commissioner of the division, and no member shall enter upon his duties until his election or appointment has been so notified and until, notwithstanding anything contained in the Indian Oaths Act, 1873, he has taken or made, at a meeting of the committee, an oath or affirmation of his allegiance to the Crown, in the following form, namely:—

Notificati
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' I, A. B., having been elected (or appointed) a member of the municipal committee of _____ do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.'

" (2) If any such person omits or refuses to take or make the oath or affirmation as required by sub-section (1) within three months of the date of the notification of his election or appointment, his election or appointment, as the case may be, shall be deemed to be invalid unless the local Government for any reason which it may consider sufficient extends the period within which such oath or affirmation may be taken or made.

" (3) If an election is deemed to be invalid under the provisions of sub-section (2) a fresh election shall be held; and if an appointment is deemed to be invalid under the provisions of sub-section (2) the local Government shall appoint another person:

" Provided that the local Government or, in the case of any municipality of the second class the Commissioner, with the previous sanction of the local Government, may refuse to notify the election as member of any person who could be removed from office by the local Government under any of the provisions of Section 16. or of any person whom the local Government for any reason which it may deem to affect the public interests may consider to be unfitted to be a member of the committee and upon such refusal, the election of such person shall be void."

11. In clause (2) of Section 25 of the said Act, after the word " absence " the words " or during the vacancy of his office " shall be inserted.

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Act, 1911

12. After sub-section (2) of Section 26 of the said Act, the following sub-section shall be inserted, namely:—

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of the Pu
Municipa
Act, 1911

“ (3) when a special and an ordinary meeting are called for the same day, the special meeting shall be held as soon as the necessary quorum is present.”

Amendment
of Section 31
of the Punjab
Municipal
Act, 1911

13. (a) In sub-section (1) of Section 31 of the said Act—

(i) for the words from “ Every committee ” to “ rules as to ” the following words shall be substituted, namely:—

“ Every committee may, from time to time, and shall, if so required by the local Government, provide by bye laws consistent with this Act and with the rules for ”.

(ii) after clause (g) of the same sub-section, the following new clause shall be inserted, namely:—

“ (gg) the conditions on which registers, documents, maps and plans of the committee may be inspected by the public, and copies of them supplied, and the fees payable for such inspection or for the supply of such copies; ”

(b) for sub-section (2), of the same section the following sub-section shall be substituted, namely:—

“ (2) No bye-law made under clause (c) or clause (d) or clause (f) of sub-section (1) shall take effect until it has been approved by the local Government.”

Amendment
of Section 32
of the Punjab
Municipal
Act, 1911.

14. In Section 32 of the said Act, in sub-section (1)—

(1) between the word “ committees ” and the word “ under ” occurring in line 4 the words, figures, and brackets “ under sub-section (1) of Section 13 ” shall be inserted;

(2) between the figures “ 31 ” and the word “ and ” occurring in line 5 the words and figures “ and under Section 41 ” shall be inserted, and

(3) for the words “ the Commissioner of the Division ” the words “ any person ” shall be substituted.

Substitution
of new sec-
tion for Sec-
tion 33 of the
Punjab Mu-
nicipal Act,
1911.

15. For Section 33 of the said Act the following section shall be substituted, namely:—

Delegation
of certain
powers and
functions of
committees.

“ 33. (1) Notwithstanding anything in this Act, every committee may, subject to the provisions of Section 46, with the previous sanction of the local Government in the case of the first class, and of the Commissioner in the case of those

of the second class, by resolution, delegate:—

- “(a) to the president, a vice-president, the secretary or a sub-committee all or any of the powers conferred upon the committee by sections 39, 72, 75, 77, 97, 98, 101, 105, 10, (1), 110, 113, 114, 115, 115-A, 117, 118, 119, 122, 124, 126, 127, 128, 129, 130, 131, 140, 142, 143, 145, (b) and (c), 166, 169 (c), 170, 170-A (1) and (2), 172 (2), 173, 176, 191, 195-A, 203 to 208 (both inclusive), 210, 211, 212 and 220;
- “(b) to the Medical Officer of Health all or any of the powers conferred upon the committee under Sections 39, 105, 109, 113, 114, 115, 115-A, 116, 117, 118, 119, 125, 126, 128, 131, 142, 143, 144, 145, [clauses (b) and (c)], 146, 149, 155, 156, 157, 166, 182, 203, 204, 205, [clause (b)], 206, 208, 211, and 212;
- “(c) and to the Inspector-General of Civil Hospitals, Civil Surgeon of the district or any officer of the Department of Public Instruction or Public Health or all or any of the powers conferred upon the committee under Section 39,
- “(d) and to the Municipal Engineer the powers conferred upon the committee under Section 195-A, and under Section 195, except to the extent that composition under that section shall require the sanction of the committee

in respect of all or particular classes of cases arising under these sections, and for the whole or any part of the municipality, and may, by resolution, withdraw the powers so delegated.

“(2) the delegation by the committee of any power under sub-section (1) may be made subject to the condition that all or any orders made in pursuance of such delegation shall be subject to the right of appeal to, or revision by, the committee within such period as may by bye-law be prescribed.”

16. For Section 35 of the said Act, the following section shall be substituted, namely:—

“35. (1) On the occurrence or threatened occurrence of any event involving or likely to involve extensive damage to property or danger to human life or grave inconvenience to the public, the president or, in the absence of the president or during the vacancy of his office, a vice-president may, if in his opinion there is an emergency necessitating action before the matter can be considered by the committee, direct the

Extraordinary power of president or vice-president in case of emergency

execution of any such work or the doing of any such act which the committee is empowered to execute or do, as the emergency shall in his opinion justify or require, and may direct that the expense of executing such work or doing such act be paid from the municipal fund:

“ Provided that every such action taken under this section shall be reported to the committee at its next meeting.

“(2) The president or vice-president shall not act under this section in contravention of any order of the committee.

“(3) The president or in his absence or during the vacancy of his office a vice-president may prohibit, until the matter has been considered by the committee, the doing of any act which is in his opinion undesirable in the public interest:

“ Provided that the act is one which the committee has power to prohibit.

“(4) No direction given in this section shall be questioned in any court on the ground that the case was not one of emergency.”

Amendment
of Section 38
of the Punjab
Municipal
Act, 1911.

17. Sub-section (2) of Section 38 of the said Act shall be renumbered sub-section (3) of that section, and for sub-section (1) of that section the following sub-sections shall be substituted, namely:—

“(1) Every committee shall, from time to time, at a special meeting, appoint, subject to the approval of the local Government in the case of a municipality of the first class and of the Commissioner in the case of municipality of the second class, one of its members, or any other person, to be its Secretary, and may, at a like meeting, suspend, remove, dismiss or otherwise punish any person so appointed;

“(2) The committee may, and shall when so required by the local Government appoint at a special meeting a person or persons approved by the local Government to be its Medical Officer of Health or Engineer, and may assign to him or them such remuneration as it may think fit, and may, at a special meeting, remove or dismiss any person so appointed;

“ Provided that a Medical Officer of Health towards whose emoluments a contribution is made by the local Government shall not be appointed or dismissed without the previous sanction of the local Government.”

18. For Section 39 of the said Act, the following section shall be substituted, namely:—

Employ-
ment of
other offi-
cers and
servants.

“ 39. Subject to the provisions of this Act and the rules and bye-laws made thereunder, a committee may, and if so required by the local Government shall, employ other officers and servants, and may assign to such officers and

servants such remuneration as it may think fit, and may suspend, remove, dismiss, or otherwise punish any officer or servant so appointed.

19. For Section 41 of the said Act the following section shall be substituted, namely:—

“41. If in the opinion of the local Government any officer or servant of the committee is negligent in the discharge of his duties, the committee shall, on the requirement of the local Government, suspend, fine or otherwise punish him; and if in the opinion of the local Government he is unfit for his employment, the committee shall dismiss him.”

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20. For clauses (b) and (c) of sub-section (2), Section 43 of the said Act, the following clauses shall be substituted, namely:—

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“(b) if his pay is less than twenty rupees a month, either permit him to contribute to a provident or annuity fund established under (c) or grant him a gratuity on retirement; and

“(c) if his pay is over twenty rupees a month establish and maintain a provident or annuity fund, and compel him to contribute thereto.”

21. For sub-section (2) of Section 45 of the said Act the following sub-section shall be substituted, namely:—

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“(2) should any officer or servant employed by a committee, in the absence of a written contract authorising him so to do, and without reasonable cause, resign his employment or absent himself from his duties without giving one month's notice to the committee he shall be liable to forfeit a sum not exceeding one month's wages out of any wages due to him, and if no wages, or less than one month's wages, are due to him, he shall be liable to a penalty not exceeding wages for one month or an amount equal to the difference between one month's wages and the wages due to him, which shall be recoverable in the manner provided by Section 81.”

22. For sub-section (1) of Section 48 of the said Act, the following sub-section shall be substituted, namely:—

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“(1) If any member, officer or servant of a committee or of a joint committee, without the previous permission in writing of the Commissioner voluntarily renders himself interested in any contract made with that committee, or if within one month of his becoming interested in any such contract he neither resigns nor obtains the permission in writing of the Commissioner for his remaining a member, officer or servant of the committee inspite of his interest in

such contract, he shall be deemed to have committed an offence under Section 168 of the Indian Penal Code:

"Provided that for the purposes of this sub-section a person who has been elected but whose election has not been notified shall be deemed to be a member."

23. For Section 50 of the said Act, the following section shall be substituted, namely:—

Liability of
the members
of the com-
mittee.

"50. (1) Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a committee, if such loss, waste or misapplication is reported by the Examiner of Local Fund Accounts or other audit authority empowered by the local Government in this behalf to be a direct consequence of his neglect or misconduct in the performance of his duties while a member of the committee; and he may after being given an opportunity, by notice served in the manner provided for the service of summonses in the Civil Procedure Code, to show cause by written or oral representation why he should not be required to make good the loss, be surcharged with the value of such property or the amount of such money by the Deputy Commissioner, or, if the Deputy Commissioner is a member of the municipal committee, by the Commissioner, and if the amount is not paid within fourteen days from the expiry of the period of appeal prescribed by sub-section (2) the Collector at the request of the Deputy Commissioner or Commissioner, as the case may be, shall proceed forthwith to recover the amount as if it were an arrear of land revenue, and have it credited to the municipal fund.

"(2) The person against whom an order under clause (1) is made may, within thirty days of the notification of such order, appeal to the Commissioner from the order of the Deputy Commissioner, or, if the order has been passed by the Commissioner, to the local Government, who shall appoint an officer to hear the appeal; and the appellate authority shall have the power of confirming, modifying or disallowing the surcharge:

"Provided that no person shall under this section be called upon to show cause after the expiry of a period of four years from the occurrence of such loss, waste or misapplication or after the expiry of one year from the time of his ceasing to be a member;

"Provided further that nothing in this section shall be deemed to debar the aggrieved party from seeking a remedy in a civil court against an order made under clause (1)."

24. For Section 51 of the said Act, the following section shall be substituted, namely:—

"51. There shall be formed for each municipality a municipal fund, and there shall be placed to the credit thereof—

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fund.

"(a) all sums received by, or on behalf of the committee under this Act or otherwise ; and

"(b) the balance (if any) standing at the credit of the municipal fund of the municipality at the commencement of this Act."

25. (1) (i) In sub-section (1) of Section 52 of the said Act, clause (b) shall be relettered as (c) and in clause (c) as relettered for the word "secondly" the word "thirdly" shall be substituted, and between clauses (a) and (c) as relettered, the following shall be inserted as clause (b), namely:—

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Act, 1911.

"(b) secondly, such sum as the committee may be required by the local Government to contribute towards the cost of such Local Self-Government Board or Inspectorate as the local Government may establish, for the purpose of advising, assisting and supervising the work of Municipal Committees and other local bodies:

"Provided that such sum shall not exceed an amount equal to one per cent. of the income for the financial year preceding the year, in which the committee is called upon to make the contribution."

(ii) For clause (c) of the same sub-section the following clauses shall be substituted, namely:—

"(d) fourthly, such sum as may be required to pay the expenses incurred in auditing the accounts of the committee, and such portion of the cost of any public expenditure by the Government of India or the local Government as may be held by the local Government to be equitably payable by the committee in return for services rendered to it;"

(iii) After clause (d) as relettered of the same sub-section the following clauses shall be inserted, namely:—

"(e) fifthly, such sum as the committee may be required by the local Government to contribute towards the maintenance of pauper lunatics or pauper lepers sent from any place in the province to mental hospitals or public asylums whether in or outside the province;

“(f) sixthly, such sum as may be due to Government in respect of the cost of maintenance by Government, on behalf of the committee, of water-works, drainage, sewage or other works.”

(2) After sub-section (2) of the same section, the following sub-sections shall be inserted, namely:—

“(3) Notwithstanding anything contained in the foregoing sub-sections of this Act no charges or expenses shall be paid from the municipal fund incidental to any matter which has been specifically declared by the local Government by general or special order to be a matter in regard to which no expenditure shall be met from the municipal fund.

“(4) Subject to the provisions of this Act and the rules and bye-laws made thereunder it shall be the duty of the president and of any member presiding at any meeting of the committee or of a sub-committee to disallow the consideration or discussion of any matter for which provision is not made in Section 52 or any other section of the Act.”

Amendment
of Section 54
of the Punjab
Municipal
Act, 1911

26. For sub-section (2) of Section 54 of the said Act, the following sub-section shall be substituted, namely:—

“(2) In places where there is no such treasury, sub-treasury or bank, the municipal fund may with the previous sanction of the Commissioner be deposited with any banker, or person acting as a banker, and who has given such security for the safe custody and repayment on demand of the fund so deposited as the Commissioner may in each case think sufficient.”

Amendment
of Section 55
of the Punjab
Municipal
Act, 1911.

27. For sub-section (1) of Section 55 of the said Act, the following sub-section shall be substituted, namely:—

“(1) A committee may, with the previous sanction of the Commissioner, invest any portion of its municipal fund in securities of the Government of India, or invest it in such other securities or place it in such other manner as the local Government may approve in this behalf, and vary such investment or placement for others of like nature.”

Amendment
of Section 36
of the Punjab
Municipal
Act, 1911

28. (1) In sub-section (1) of Section 36 of the said Act :—

(i) For clause (c) the following clause shall be substituted, namely :—

“(c) all public sewers and drains, and all sewers, drains, culverts and water courses in or under any public street, or constructed by or for the committee along side any public street, and all works, materials and things appertaining thereto; ”

(ii) for clause (g) the following clause shall be substituted, namely:—

“(g) all public streets, not being land owned by Government, and the pavements, stones and other materials thereof, and also trees growing on, and erections, materials, implements and things provided for, such streets.”

(2) After sub-section (2) of the same section, the following sub-section shall be inserted, namely:—

“(3) The committee shall maintain a register and a map of all immovable property of which it is the proprietor, or which vests in it, or which it holds in trust for the local Government.”

29. (i) In the Explanation to clause (b) of sub-section (1) of Section 61 of the said Act between the word “local” and the word “authority” the words “or other public” shall be inserted;

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of the P
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Act, 191

(ii) clause (d) of the same sub-section shall be omitted and clauses (e) and (f) shall be relettered clauses (d) and (e) respectively; and

(iii) after clause (e) of the same sub-section, the following clause shall be inserted, namely:—

“(f) a tax payable by persons presenting building applications to the committee.”

30. For Section 62 of the said Act, the following section shall be substituted, namely:—

“62. (1) A committee may, at a special meeting, pass a resolution to propose the imposition of any tax under Section 61.

Proc
to
taxes.

“(2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property proposed to be taxed, the amount or rate of the tax to be imposed, and the system of assessment to be adopted.

“(3) Any inhabitant objecting to the proposed tax may, within thirty days from the publication of the said notice, submit his objection in writing to the committee; and the committee shall at a special meeting take his objection into consideration.

“(4) If the committee decides to amend its proposals or any of them, it shall publish amended proposals, along with a notice indicating that they are in modification of those previously published for objection,

“(5) Any objections which may within thirty days be received to the amended proposals shall be dealt with in the manner prescribed in sub-section (3).

“(6) When the committee has finally settled its proposals, it shall if the proposed tax falls under clauses (b) to (f) of sub-section (1) of Section 61 direct that the tax be imposed, and shall forward a copy of its order to that effect through the Commissioner to the local Government and if the proposed tax falls under any other provision, it shall submit its proposals together with the objection if any made in connection therewith, to the Commissioner.

“(7) If the proposed tax falls under clause (a) of sub-section (1) of Section 61, the Commissioner, after considering the objections received under sub-sections (3) and (5), may either refuse to sanction the proposals or return them to the committee for further consideration, or sanction them without modification or with such modification not involving an increase of the amount to be imposed, as he deems fit, forwarding to the local Government a copy of the proposals and his order of sanction; and if the tax falls under sub-section (2) or (3) of Section 61, the Commissioner shall submit the proposals and objections with his recommendations to the local Government.

“(8) The local Government on receiving proposals for taxation under sub-section (2) or (3) may sanction or refuse to sanction the same, or return them to the committee for further consideration.

“(9) When any such proposal which requires the further sanction of the Governor-General in Council, has been sanctioned by the local Government, it shall submit the same to the Governor-General in Council, with the objections (if any) received through the committee; and the Governor-General in Council may sanction the proposal, or refuse to sanction it, or return it to the local Government for further consideration.

“(10) (a) When a copy of an order under sub-sections (6) and (7) has been received, or,

“(b) when a proposal has been sanctioned under sub-section (8) or sub-section (9), the local Government shall notify the imposition of the tax in accordance with such order or proposal, and shall in the notification specify a date not less than three months from the date of the notification, on which the tax shall come into force.

“(11) A tax leviable by the year shall come into force on the first day of January or on the first day of April or on the first day of July, or on the first day of October

in any year, and if it comes into force on any other than the first day of the year by which it is leviable shall be leviable by the quarter till the first day of such year then next ensuing.

“(12) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act.”

31. For Section 78-A of the said Act, the following section shall be substituted, namely :—

“78-A. (1) When a committee, with the sanction of the local Government has agreed with a Cantonment Authority or the Committee of an adjoining Small Town or an area notified under Section 241 that in consideration of the payment of a lump sum or otherwise the same limits for octroi or terminal tax or any toll or tax shall be established for the contracting parties, the committee may fix limits under Section 188 so as to include so much of the area controlled by the said contracting parties as it may deem necessary, and shall have the powers of collecting such toll or tax or octroi or terminal tax on animals or articles brought within such limits, and the provisions of this Act for the assessment and collection of such tax or toll or octroi or terminal tax shall apply in the same way as if the said limits were wholly comprised in the area of the municipality.

Extensu
of taxati
limits
agreement.

“(2) The total of the proceeds of such taxes or tolls made in the joint area of the municipality and cantonment or small town or notified area and the cost thereby incurred shall be apportioned between the municipal fund and the fund subject to the control of the Cantonment Authority or the Committee of the Small Town or Notified Area in such proportion as shall have been determined by the agreement.”

32. In sub-section (1) of Section 81 of the said Act for the word “or” between the words “water rate” and the word “fee” the word “rent” shall be substituted.

Amendm
of Section
of the Pur
Munic i p
Act, 1911.

33. After Section 81 of the said Act the following new section shall be inserted, namely :—

“81-A. When a committee has made over to Government its water works for maintenance, any arrear of water tax and water rate or both due to the committee under this Act, may be recovered by the local Government on behalf of the committee as arrears of land revenue.”

Recovery
water t
and w
rate
arrears
land rever

34. For sub-section (2) of Section 98 of the said Act, the following sub-section shall be substituted, namely :—

Amendm
of Section
of the Pur
Munic i p
Act, 1911

"(2) For all water supplied under sub-section (1) payment shall be made at a rate not less than the rate prescribed under sub-section (2) of Section 97."

Amendment
Section
of the
Punjab Municipal
Act,
1933.

35. (1) In Section 107 of the said Act—

(i) for sub-section (1) the following sub-section shall be substituted, namely:—

"(1) The committee may by public notice order and, if so directed by the local Government, shall within one month of the notification of such direction be deemed to have ordered, any burial or burning ground situate within municipal limits or within one mile thereof which is certified by the Medical Officer of Health to be dangerous to the health of persons living in the neighbourhood to be closed, from a date to be specified in the notice, and shall in such case, if no suitable place for burial or burning exists within a reasonable distance, provide a fitting place for the purpose."

(ii) for sub-section (3) the following sub-section shall be substituted, namely:—

"(3) No burial or burning ground, whether public or private, shall be made or formed after the commencement of this Act except with the sanction in writing of the committee which shall not be granted unless the Medical Officer of Health has certified in writing for the information of the committee that such burial or burning ground is not prejudicial to public health.

"Provided that no such burial or burning ground shall be made or formed, except with the sanction of the local Government."

36. For Section 114 of the said Act the following section shall be substituted, namely:—

Building,
in
dangerous
state.

"114. Should any building, wall or structure, or anything affixed thereto, or any bank or tree, be deemed by the committee to be in a ruinous state or in any way dangerous, or there be any fallen building or debris or other material which is unsightly or is likely to be in any way injurious to health, it may, by notice, require the owner thereof either to remove the same or to cause such repairs to be made to the building, wall, structure or bank, as the committee may consider necessary for the public safety, and should it appear to be necessary in order to prevent imminent danger, the committee shall forthwith take such steps, at the expense of the owner, to avert the danger as may be necessary."

37. For Section 116 of the said Act, the following section shall be substituted, namely:—

"116. Should any building, or any part of any building, appear to the committee to be unfit for human habitation in consequence of the want of proper means of drainage or ventilation or any sufficient reason, the committee may, by notice, prohibit the owner or occupier thereof from using the same for human habitation, or suffering it to be so used, until it has been rendered fit for such use to the satisfaction of the committee, and no such owner or occupier shall inhabit such building or suffer it to be inhabited until the committee shall have informed in writing the owner or occupier that the prohibition has been withdrawn "

Power
prohibit u
for hum
habitation
buildings
fit for su
use.

38. In Section 118 of the said Act, the full stop shall be changed into a comma, and the following words inserted thereafter, namely:—

Amendm
o f Sect
118 of
Punjab
municipal
1911.

"or are in any way offensive or injurious to health."

39. For Section 120 of the said Act, the following section shall be substituted, namely:—

"120. (1) If the Medical Officer of Health certifies that the cultivation of any description of crop or the use of any kind of manure or the irrigation of land in any specified manner,—

Prohibi
o f culti
tion, use
manure
irrigation
injurious
health.

"(a) in any place within the limits of any municipality, is injurious or facilitates practices which are injurious to the health of persons dwelling in the neighbourhood; or

"(b) in any place within or beyond the limits of any municipality is likely to contaminate the water supply of such municipality or otherwise render it unfit for drinking purposes;

the committee may prohibit the cultivation of such crop, the use of such manure or the employment of the method of irrigation, so reported to be injurious, or impose such conditions with respect thereto as may prevent such injury or contamination:

"Provided that if it is notified by the local Government that the cultivation of such crop, the use of such manure, or the employment of such method of irrigation is prohibited or conditions are imposed with respect thereto, the committee shall be deemed to have ordered such prohibition, or imposed such conditions, and shall issue notices in accordance with the notification;

"Provided also that, when on any land to which such prohibition applies the act prohibited has been practised during the five years next preceding the prohibition in the ordinary

course of husbandry, compensation shall be paid from the municipal fund to all persons interested therein for any damage caused to them by the effect of such prohibition.

“(2) Should any person fail within six months from the date of its service to comply with a prohibitory notice issued under sub-section (1) he shall be punishable with fine which may extend to fifty rupees and with a further fine which may extend to five rupees for every day during which the offence is continued.”

40. In Section 121 of the said Act, between the word “brick-kiln,” and the word “pottery” the word “charcoal-kiln,” shall be inserted.

Amendment
of Section
3 of the
Punjab
Municipal
Act, 1911

41. For sub-section (1) of Section 123 of the said Act the following sub-section shall be substituted, namely:—

“(1) Whenever it appears that any place registered or licensed under the preceding sections is a nuisance to the neighbourhood or likely to be dangerous to life, health or property, the committee may, and if so required by the local Government shall, by notice require the occupier thereof to discontinue the use of such place, or to effect such alterations, additions or improvements as will, in the opinion of the committee, render it no longer a nuisance or dangerous.”

Amendment
of Section
4 of the
Punjab
Municipal
Act, 1911

42. For sub-section (1) of Section 124 the following shall be substituted, namely:—

“(1) No person shall use or employ in any factory or other place any whistle or trumpet, or any other mechanical contrivance which emits an offensive noise for the purpose of summoning or dismissing workmen or persons employed, nor shall any person by means of any contrivance increase the noise emitted in any such factory or place by the exhaust pipe of any engine, without the written permission of the committee, in granting which, the committee may impose such conditions as it may deem proper, restricting the times at which such whistle or trumpet, or other contrivance may be used.”

And in sub-section (3) of the same section for the words “any steam whistle or steam trumpet” there shall be substituted the following, namely:—

“any whistle, trumpet or other contrivance.”

Amendment
of Section
5 of the
Punjab
Municipal
Act, 1911.

43. In Section 125 of the said Act:—

(i) the proviso to sub-section (2) shall be omitted; and
(ii) after sub-section (3) the following sub-section shall be inserted, namely:—

"(4) The committee may, and when required by the local Government shall provide latrines and urinals for the use of the public."

44. For Section 129 of the said Act, the following section shall be substituted, namely:—

"129. Whoever without the permission of the committee, causes or knowingly or negligently allows the contents of any sink, sewer or cesspool or any other offensive matter, to flow, drain or be put up in any street or public place, or into any irrigation channel or any sewer or drain not set apart for the purpose, shall be punishable with fine which may extend to twenty rupees."

Discharge
sewerage

45. For sub-section (1) of Section 140 of the said Act, the following sub-section shall be substituted, namely:—

Amendment
of Section
140 of
Punjab
Municipal
1911.

"(1) The committee may, by notice, require the owner of any building or land in any street to put up and keep in good condition proper troughs and pipes for receiving and carrying water and sullage from the building or land and for discharging the same so as not to inconvenience persons passing along the street."

46. In Section 141 of the said Act, for the words from "fails forthwith" to "fifty rupees" between clause (e) and the proviso thereof the following words shall be substituted, namely:—

Amendment
of Section
141 of
Punjab
Municipal
1911.

"fails forthwith to give information, or knowingly gives false information to the Medical Officer of Health or to any officer to whom the committee may require information to be given respecting the existence of such disease, shall be punishable with fine which may extend to fifty rupees."

47. (1) Section 142 shall be renumbered as sub-section (1) of Section 142, and in that sub-section as renumbered—

Amendment
of Section
142 of
Punjab
Municipal
1911.

(i) in clause (b) after the word "sarai" the words and commas, "hotel, boarding house" shall be inserted, and

(ii) for clause (c) the following clause shall be substituted, namely:—

"(c) living in a room or house which he neither owns nor pays rent for, nor occupies as the guest or relative of any person who owns or pays rent for it, or"

(2) To the same section the following sub-section shall be added, namely:—

"(2) The committee shall, if required by the local Government erect an infectious diseases hospital of such

type and dimensions as the local Government shall deem expedient."

48. For Section 143 of the said Act, the following section shall be substituted, namely:—

infection
buildings
articles.

" 143. If the committee is of opinion that the cleansing or disinfecting of a building or any part thereof, or of any article therein, which is likely to retain infection, will tend to prevent or check the spread of any disease, it may, by notice, require the owner or occupier to cleanse or disinfect the same, or to destroy such article, in the manner and within the time prescribed in such notice."

49. For Section 147 of the said Act, the following section shall be substituted, namely:—

spreading of
disease so as
to be injuri-
ous to health.

" 147. Whoever keeps any swine or other animals in disregard of any orders which the committee may give to prevent them from becoming a nuisance, or so as to be injurious to the health of the inhabitants or of animals shall be punishable with fine which may extend to twenty rupees and to fifty rupees for every such subsequent offence.

Amendment
of the
Punjab
Municipal
Act.

50. In the proviso to sub-section (2) of Section 150 of the said Act, for the words and figures "Punjab Adulteration of Food Act, 1919," the words and figures "The Punjab Pure Food Act, 1929," shall be substituted.

51. For Section 157 of the said Act, the following section shall be substituted, namely:—

licensing

" 157. (1) Whoever, in any street or public place within the municipality, begs importunately for alms, or exposes, or exhibits, with the object of exciting charity, any deformity or disease, or any offensive sore or wound, shall be punishable with imprisonment of either description, which may extend to three months, or with a fine not exceeding fifty rupees, or with both, provided that—

" (a) in the case of a first offence, the court may, if it thinks fit, instead of sentencing the convict to any punishment, release him after due admonition;

" (b) in any case, the court may, if it is satisfied of the inability of the convict to earn a livelihood, owing to physical infirmity or debility, and if the person in charge of any poor house in the municipality certifies that he is willing to receive him, direct that the convict be received into such poor house, after being released on entering into a bond, with or without sureties, to appear and receive sentence, when called upon

during such period, not exceeding three years, as the court may direct.

“(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1889, an offence punishable under this section shall be cognizable; and notwithstanding anything contained in this Act, a court may take cognizance of such an offence in the manner provided by 190 of the Code of Criminal Procedure, 1898.”

52. For Section 152 of the said Act, the following section shall be substituted, namely—

“ 152. (1) The committee may, by public notice, prohibit in any specified part of the municipality—

Power over
disorderly
houses and
prostitutes

“(a) the keeping of a brothel;

“(b) the residence of any person who practises prostitution.

“(2) Whoever after the date specified in the public notice issued under sub-section (1) —

“(a) keeps or manages or acts or assists in the management of a brothel within the prohibited area, or

“(b) being the tenant, lessee or occupier of any premises knowingly permits such premises or any part thereof to be used as a brothel or for the purpose of habitual prostitution within the prohibited area, or

“(c) being the lessor or landlord, of any premises, or the agent to such lessor or landlord, lets the same or any part thereof, within the prohibited area with the knowledge that such premises or some part thereof, within the prohibited area with the knowledge that such premises or some part thereof, are, or is used as a brothel, or for the purposes of habitual prostitution, or is wilfully a party to the continued use of such premises as a brothel or for the purposes of habitual prostitution, or

“(d) being a practising prostitute resides within the prohibited area,

shall be punishable with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees or with both, and in the case of a continuing offence with an additional fine not exceeding ten rupees for every day after the first during which the offence continues.”

53. For Section 156 of the said Act, the following section shall be substituted, namely:—

Depositing
or throwing
of earth or
material of
any descrip-
tion on roads
or into drains

“156. Whoever, without the permission of the committee or in disregard of its orders, throws or deposits, or permits his servants or members of his household under his control to throw or deposit earth or materials of any description, or refuse, rubbish or offensive matter of any kind upon any street or public place or into any irrigation channel or public sewer or public drain or into any drain communicating with an irrigation channel or a public sewer or public drain, shall be punishable with fine which may extend to twenty rupees.”

Amendment
of Section
59 of the
Punjab Mu-
nicipal Act,
1911.

54. For sub-section (2) of Section 159 of the said Act, the following sub-section shall be substituted, namely:—

“(2) The committee may by public notice, except in cases to which Section 166 is applicable, undertake the house-scavenging of any houses or buildings in the municipality from any date not less than two months after issue of the notice.”

Punishment
of cultivators
for failure to
provide for
proper house-
scavenging.

55. For Section 166 of the said Act, the following section shall be substituted, namely:—

“166. (1) Should any person, who himself or any member of whose family residing with him cultivates land within municipal limits or in a village within two miles from the municipal limits, fail to provide for the proper house-scavenging of any house or building occupied by him within the limits of the municipality, the committee may complain to a magistrate.

“(2) The magistrate receiving the complaint shall hold an enquiry, and, should it appear to him that such person has not provided for the proper house-scavenging of the house or building, he may pass an order empowering the committee to undertake the same, and thereupon the committee shall be entitled to undertake such house scavenging.”

Amendment
of Section
57 of the
Punjab Mu-
nicipal Act,
1911.

56. For sub-section (1) of Section 167 of the said Act, the following sub-section shall be substituted, namely:—

“(1) The committee may, and shall when so required by the local Government, fix premises, with the approval of the Deputy Commissioner either within or without the limits of the municipality, for the slaughter of animals for sale, or of any specified description of such animals, and may, with the like approval, grant and withdraw licenses for the use of such premises, or, if they belong to the committee, charge rent or fees for the use of the same.”

57. For clause (g) of Section 169 of the said Act, the following clause shall be substituted, namely:—

“(g) subject to the provisions of any rules prescribing the conditions on which property vesting in the committee may be transferred, may lease, sell or otherwise dispose of any property acquired by the committee under clause (f); or any land vesting in and used by the committee for a public street and no longer required therefor, and in so doing may impose conditions regulating the removal and construction of buildings upon it and the other uses to which such land may be put:

“Provided that land owned by proprietors other than the local Government shall become the absolute property of the committee after it has continuously vested in the committee for use as a public street for a period of twenty-five years; but that the possession of such land that ceases to be required for use as a public street before the expiry of twenty-five years from the time that it became vested in the committee shall be transferred to the proprietor thereof, on payment by him of reasonable compensation to the committee for improvements of such land, and subject to such restrictions as the committee may impose on the future use of such land, and that should the proprietor be unable or unwilling to pay the amount of such compensation the committee may, subject to such conditions as it may deem fit, sell the land, and shall pay to the owner the proceeds, if any, over and above the amount of such compensation, which shall be paid into the municipal fund, or may dispose of it in such manner as it may deem fit.”

58. Section 170 of the said Act shall be omitted.

59. Section 170-A of the said Act shall be renumbered as Section 170.

60. Sections 170-B, 170-C, 170-D, 170-E and 170-F of the said Act shall be renumbered as Sections 170-A, 170-B, 170-C, 170-D and 170-E, respectively.

61. For Section 170-G of the said Act the following section shall be substituted, namely:—

“170-F. In any case where the committee considers that any land is being or has been laid out as a street without the notice required by Section 170-A having been given or in contravention of any written direction made by the committee under Section 170-B, or of any bye-law or provision of this Act, the committee may, by notice in writing, require the owner of the land to alter the street in such manner as it deems necessary.”

Amendment
of Section
169 of the
Punjab Mu-
nicipal Act,
1911.

Renumbering
of Sections:
170-B, 170-C
170-D, 170-F
and 170 F.

Notice to
owner of
land under
streets.

Power to
require re-
pairs of
streets and
to declare
such streets
public

62. For Section 171 of the said Act, the following section shall be substituted, namely:—

“171. (1) (a) When the municipal committee considers that in any street other than a public street, or in any part of such street within the municipality, it is necessary, for the public health, convenience or safety, that any work should be done for the levelling, paving, metalling, flagging, channelling, draining, lighting or cleaning thereof, the municipal committee may by written notice require the owners of such street or part thereof, to carry out such work in a manner and within a time to be specified in such notice; and

“ (b) Should the owner refuse or should he fail to carry out the work within the time specified, the committee may, by written notice, require the owners of the land or buildings fronting, adjoining or abutting upon such street or part thereof to carry out the work in such manner and within such time as may be specified in the notice

“ (2) If compliance with the terms of the notice issued under clause (b) of sub-section (1) is not effected within the time specified, the committee may, if it thinks fit, itself execute the work, and may recover under the provisions of Section 81 the expenses incurred in doing so in such proportions as it may deem equitable from the owner of the street and the persons served with a notice under clause (b) of sub-section (1).

“ (3) After such work has been carried out by the persons served with a notice under clause (b) of sub-section (1) or as provided in sub-section (2) by the committee at the expense of such persons and the owner of the street, the street or part thereof, in which such work has been done, may, and on the requisition of the owner or owners of the major portion of the said street or part thereof, or on the requisition of a majority of the persons served with a notice under clause (b) of sub-section (1), shall be declared by a public notice to be put up therein by the committee to be a public street and shall vest in the committee.

“ (4) A committee may at any time, by notice fixed up in any street or part thereof not maintainable by the committee, give intimation of their intention to declare the same a public street, and unless within one month next after such notice has been so put up, the owner or any one of several owners of such street or such part of a street lodge objection thereto at the municipal office, the municipal committee may, by notice in writing, put up in such street, or such part, declare the same to be a public street vested in the committee.

"(5) This section shall not take effect in any municipality until it has been specially extended thereto by the local Government, of its own motion or at the request of the committee."

63. For Section 172 of the said Act the following section shall be substituted, namely:—

Punishment
for immov-
able en-
croachment
or overhang-
ing structure
over street

"172. (1) Whoever without the written permission of the committee makes any immovable encroachment on or under any street, on, over or under any sewer, or water-course, or erects or re-erects any immovable overhanging structure projecting into a street at any point above the said ground level, shall be punishable with a fine which may extend to fifty rupees.

"(2) The committee may, by notice, require the owner or occupier of any building to remove or alter, within a specified time not exceeding six weeks, such immovable encroachment or over hanging structure as aforesaid, and no compensation shall be claimable in respect of such removal or alteration:

"Provided that if a period of more than three years has elapsed from the completion of the encroachment or overhanging structure, no prosecution shall lie under sub-section (1); nor shall such encroachment or overhanging structure be required to be removed or altered without payment of reasonable compensation."

64. For Section 173 of the said Act, the following section shall be substituted, namely:—

"173. (1) The committee may grant permission in writing, on such conditions as it may deem fit for the safety or convenience of persons passing by, or dwelling or working in the neighbourhood, and may charge fees for such permission, and may at its discretion withdraw the permission, to any person to—

Power to
permit occu-
pation of
public street
and to re-
move ob-
struction.

"(a) place in front of any building any movable encroachment upon the ground level of any public street or over or on any sewer, drain or watercourse or any movable overhanging structure projecting into such public street at a point above the said ground level,

"(b) take up or alter the pavement or other materials for the fences or posts of any public street,

"(c) deposit or cause to be deposited building materials, goods for sale, or other articles on any public street, or

“(d) make any hole or excavation on, in or under any street, or remove materials from beneath any street, so as to cause risk of subsidence, or

“(e) erect or set up any fence, post, stall or scaffolding in any public street.

“(2) Whoever does any of the acts mentioned in sub-section (1) without the written permission of the committee shall be punishable with fine which may extend to fifty rupees and the committee or the secretary of the committee or the Medical Officer of Health or any person authorised by the committee may—

“(i) after reasonable opportunity has been given to the owner to remove his material and he has failed to do so, remove or cause to be removed by the police, or any other agency, any such movable encroachments or overhanging structures and any such materials, goods or articles of merchandise and any such fence, post, stall, or scaffolding,

“(ii) and take measures to restore the street to the condition it was in before any such alteration, excavation or damage.

“(3) If the material specified in clause (i) of sub-section (2) has not been claimed by the owner within a fortnight of its having been deposited for safe custody by the committee, or if the owner shall fail to pay to the committee the actual cost of removal or deposit in safe custody, the committee may have the material sold by auction at the risk of the owner, and the balance of the proceeds of such sale shall after deduction of the expenditure incurred by the committee be paid to the owner, or if the owner cannot be found, or refuses to accept payment the balance shall be kept in deposit by the committee until claimed at the risk of the person entitled thereto, and if no claim is made within two years the committee may credit the amount to the municipal fund.

“*Explanation.*—For the purposes of this section ‘movable encroachment’ includes a seat or settee, and ‘movable overhanging structure’ includes an awning of any material.”

65. For sub-section (1) of Section 174 of the said Act, the following sub section shall be substituted, namely:—

“(1) Should any house, shop, wall or other building or part of a building project beyond the regular line of a street, either existing or determined on for the future, or beyond the front of the building on either side thereof, the committee may, whenever such house, shop, wall or other building or part thereof, has been either entirely or in greater part

taken down or burned down, or has fallen down, by notice require such building or part when being re-built to be set back to or towards the said regular line or the front of the adjoining buildings; and the portion of the land added to the street by such setting back or removal shall become part of the street and shall vest in the committee:

“Provided that the committee shall make full compensation to the owner of the building, or of the land thus vacated for any damage it may sustain in consequence of the building or any part thereof being set back for any damage he may sustain in consequence of his building or any part thereof being set back.”

66. After Section 174 of the said Act, the following new section shall be inserted, namely:—

“174-A. Notwithstanding anything contained in Sections 172, 173, or 174 or in clause (u) of Section 183, and subject to any general or special order that the local Government may make in this behalf if any street, being the property of the local Government and not having been transferred by it, vests in local Government—

Special provision regarding streets belonging to Government.

“(a) the committee shall not, in respect of such street, grant permission to do any act the doing of which without the written permission of the committee is punishable under Section 172 or Section 173 or allow any building to be set forward under the provisions of sub-section (2) of Section 174, except with the sanction of the local Government which may be given in respect of a class of cases generally or in respect of a particular case;

“(b) the committee shall, if so required by the local Government, exercise the power conferred upon it by sub-section (2) of Section 172 or sub-section (2) of Section 173 or sub-section (1) of Section 174 or clause (u) of Section 183 or any bye-law made in exercise of the power conferred by clause (u) of Section 183 in respect of any encroachment or overhanging structure on or over such street or any materials, goods or articles of merchandise deposited on such street, or any fence, post, stall or scaffolding erected or set up in any such street or in respect of any building or part of a building which projects beyond the regular line of such street.”

67. For Section 175 of the said Act, the following section shall be substituted, namely:—

Removal or alteration of any Balcony, projection or structure, etc., on payment of compensation

" 175. The committee may, subject to the payment of reasonable compensation, by notice, require the owner or occupier of any building within a period of not less than six weeks, to be specified in such notice, to remove or alter any balcony, projection, structure or verandah, erected with the sanction of the committee, overhanging, projecting into or encroaching on any street or into or on any drain, sewer or aqueduct therein."

Amendment of Section 178 of the Punjab Municipal Act, 1911.

68. Section 178 of the said Act shall be numbered as sub-section (1) of Section 178 and the following shall be added as sub-section (2) of that section, namely:—

" (2) Notwithstanding anything contained in Section 228 a court may take cognizance of an offence under sub-section (1) of this section upon the complaint of the owner or occupier or other person in charge of the property in respect of which such offence is alleged to have been committed."

Amendment of Section 132 of the Punjab Municipal Act, 1911

69. Section 182 of the said Act shall be renumbered as sub-section (1) of Section 182, and to that section as renumbered the following sub-section shall be added, namely:—

" (2) Any animal found picked, tethered or straying on any public street without the permission of the committee may be removed to a pound by any officer or servant of the committee or by a police officer."

Amendment of Section 183 of the Punjab Municipal Act, 1911

70. For sub-section (1) of Section 183 of the said Act. the following sub-section shall be substituted, namely:—

" (1) Whoever drives or propels any vehicle not properly supplied with lights in any street during the period from half an hour after sunset to half an hour before sunrise, shall be punishable with fine which may extend to fifty rupees.

Amendment of Section 188 of the Punjab Municipal Act, 1911

71. In Section 188 of the said Act—

(i) for the words "any committee may by bye-law" preceding clause (a), the following words shall be substituted, namely:—

" a committee may, and shall, if so required by the local Government by bye-law,—".

(ii) for that portion of clause (b), which precedes the first proviso, the following shall be substituted, namely:—

" (b) limit the rates which may be demanded for the hire of any carriage, cart, or other conveyance, or of animals hired to carry loads or persons, or for the services of persons hired to carry

loads or to impel or carry such conveyances, and limit the loads which may be carried by any animal, or carriage, cart, or other conveyance, plying for hire, within the limits of the municipality.”

(iii) after sub-clause (i) of clause (d) the following sub-clause shall be inserted, namely:—

“(ia) for the licensing of hotels and lodging-houses and for the fees payable for such licences and the conditions on which they may be granted or revoked.”

(iv) for sub-clause (i) of clause (e) the following sub-clause shall be substituted, namely:—

“(i) for the inspection and proper regulation of encamping grounds, pounds, serais, bakeries, aerated water, factories, ice factories, dhobis’ ghats, flour mills, food-grain godowns, dispensing chemists’ shops, slaughter-houses, and places licensed under Section 121.”

(v) for clause (m) the following clause shall be substituted, namely:—

“(m) regulate the collection, storage, preservation from pollution and use of rain water, and the carrying out of the provisions of Sections 96 to 105”; and

(vi) for clause (p) the following shall be substituted, namely:—

“(p) regulate or prohibit any description of traffic in the streets and provide for the reduction of noise caused thereby.”

(vii) for clause (t) the following clause shall be substituted, namely:—

“(t) render licenses necessary for hand carts employed for transport, or hawking articles for sale, and for the persons using such hand carts, and prescribe the conditions for the grant and revocation of such licenses.”

72. For sub-section (3) of Section 189 of the said Act, the following sub-section shall be substituted, namely:—

“(3) A committee shall by bye-law—

“(a) prescribe the manner in which notice of the intention to erect or re-erect a building shall be given to the committee;

- “(b) require that with every such notice shall be furnished a site plan of the land on which it is intended to erect or re-erect such building and a plan and specification of the building, of such character and with such details as the bye-law may require ;
- “(c) where the building appears likely to be used as a factory, require the provision of adequate housing accommodation in connection therewith.”

Substitution
new sec-
for Sec-
190 of
Punjab
Municipal
Act, 1911.

73. For Section 190 of the said Act, the following section shall be substituted, namely:—

Power of
Committee to
make bye-
laws as to
erection or
extension of
buildings

“190. (1) The committee may, and if so required by the local Government shall, by bye-laws regulate in respect of the erection or re-erection of any building within the municipality or part thereof—

- “(a) the materials and method of construction to be used for external and party walls, roofs, floors, stair-cases, lifts, fire-places and chimneys;
- “(b) the materials and method of construction and position of fire-places, chimneys, drains, latrines, privies, urinals and cess-pools;
- “(c) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on;
- “(d) the ventilation and the space to be left about the building to secure the free circulation of air and for the prevention of fire;
- “(e) the line of frontage where the building abuts on a street ;
- “(f) the number and height of storeys of which the building may consist ;
- “(g) the means to be provided for egress from the building in case of fire ;
- “(h) the materials and method of construction to be used for godowns intended for the storage of food-grains in excess of fifty maunds, in order to render them rat-proof ;
- “(i) the minimum dimensions of rooms intended for use as living rooms or sleeping rooms;

“(j) the ventilation of rooms and the minimum dimensions of doors or windows or either of both ;

“(k) the position and dimensions of projections beyond the outer face of any external wall of a building ; and

“(l) the height of factory chimneys and the provision to be made for consumption of smoke arising from the combustible used in any fire-place or furnace in a factory.

“(2) Notwithstanding anything contained in Section 193, no person shall erect or re-erect any building in contravention of any bye-law made under Section (1).”

74. For Section 192 of the said Act, the following section shall be substituted, namely :—

Substituted
of a new
tion for
tion 19
the P
Municipal
Act, 191

“192. (1) The committee may, and if so required by the Commissioner shall, within six months of the date of such requisition, draw up a building scheme for built areas, and a town planning scheme for unbuilt areas, which may among other things provide for the following matters, namely:—

Build
scheme.

“(a) the restriction of the erection or re-erection of buildings or any class of buildings in the whole or any part of the municipality and of the use to which they may be put ;

“(b) the prescription of a building line on either side or both sides of any street existing or proposed ; and

“(c) the amount of land in such unbuilt area which shall be transferred to the committee for public purposes including use as public streets by owners of land either on payment of compensation or otherwise, provided that the total amount so transferred shall not exceed forty per cent., and the amount transferred without payment shall not exceed twenty per cent. of any one owner's land within the municipal area.

“(2) When a scheme has been drawn up under the provisions of sub-section (1) the committee shall give public notice of such scheme and shall at the same time

intimate a date not less than thirty days from the date of such notice by which any person may submit to the committee in writing any objection or suggestion with regard to such scheme which he may wish to make.

“(3) The committee shall consider every objection or suggestion with regard to the scheme which may be received by the date intimated under the provisions of sub-section (2) and may modify the scheme in consequence of any such objection or suggestion and shall then forward such scheme as originally drawn up or as modified to the Commissioner, who may, if he thinks fit, return it to the committee for reconsideration and resubmission by a specified date ; and the Commissioner shall submit the plan as forwarded, or as resubmitted, as the case may be, with his opinion to the local Government, who may sanction such scheme, or may refuse to sanction it or may return it to the committee for reconsideration and resubmission by a specified date.

“(4) If a committee fails to submit a scheme within six months of being required to do so under sub-section (1) or fails to resubmit a scheme by a specified date when required to do so under sub-section (3) or resubmits a scheme which is not approved by the local Government, the Commissioner may draw up a scheme of which public notice shall be given by notification and by publication within the municipality together with an intimation of the date by which any person may submit in writing to the Commissioner any objection or suggestion which he may wish to make, and the Commissioner shall forward with his opinion any such objection or suggestion to the local Government, and the local Government may sanction such scheme as originally notified or modified in consequence of any such objection or suggestion, as the local Government may think fit; and the cost of such scheme or such portion of the cost as the local Government may deem fit shall be defrayed from the municipal fund.

“(5) When sanctioning a scheme the local Government may impose conditions for the submission of periodical reports on the progress of the scheme to the Commissioner or to the local Government, and for the inspection and supervision of the scheme by the local Government.”

75. After Section 192 of the said Act, the following section shall be inserted, namely :—

tion of
section
in the
, Mu-
Act,

"192-A. If under the provisions of any scheme sanctioned under Section 192 the erection or re-erection of buildings in a specified area for a special specified purpose is prohibited, any person who after such scheme is sanctioned uses any building for such purpose shall and unless it was used for this purpose before the scheme was sanctioned on conviction by a magistrate be liable to fine which may extend to five hundred rupees, and if after such conviction he continues to use such building for such purpose he shall be liable to fine which may extend to fifty rupees for every day during which such use continues."

Punishment
or erection of
re-erection of
a building or
sanction of
building
scheme under
Section 192

76. For Section 193 of the said Act, the following section shall be substituted, namely :—

Substitution
of a new section
for Section 193
the Punjab
Municipal
Act, 1911.

"193. (1) The committee shall refuse to sanction the erection or re-erection of any building in contravention of any bye-law made under sub-section (1) of Section 190 or in contravention of any scheme sanctioned under sub-section (3) or sub-section (4) of Section 192, unless it be necessary to sanction the erection of a building in contravention of such a scheme owing to the committee's inability to pay compensation as required by Section 174 for the setting back of a building.

Power
committee
sanction
refuse erection
or
erection
buildings

"(2) The committee may refuse to sanction the erection or re-erection of any building for any other reason, to be communicated in writing to the applicant, which it deems to be just and sufficient as affecting such building, or if the land, on which it is proposed to erect or re-erect such building, is Government property or vests in the committee, and the consent of Government or the committee has not been obtained, or if the title to the land is in dispute between such person and the committee or the Government.

"(3) Subject to the provisions of sub-section (1) the committee may sanction the erection or re-erection of any building either absolutely or subject to such modifications in accordance with the bye-laws and rules as it may deem fit.

"(4) Notwithstanding anything contained in sub-section (1) or sub-section (2) but subject to the provisions of sub-section (2) of Section 190, if the committee neglects or omits, within sixty days of the receipt from any person of a valid notice of such person's intention to erect or re-erect a building, or within one hundred and twenty days, if the notice

relates to a building on the same or part of the same site, on which sanction for the erection of a building has been refused within the previous twelve months ; to pass orders sanctioning or refusing to sanction such erection or re-erection, such erection or re-erection shall, unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee, be deemed to have been sanctioned, except in so far as it may contravene any by-law, or any building or town planning scheme sanctioned under Section 192:

“ Provided that should a resolution conveying or refusing such sanction be suspended under Section 232, the period prescribed by clause (4) shall commence to run afresh from the date of communication of final orders by the Commissioner or the local Government under Section 235;

“ Provided further that if not less than one-fifth of the members present vote against a resolution conveying sanction, the sanction shall be deemed not to have been conveyed until after the lapse of fourteen days from the passing of the resolution.”

Insertion of
w Section
1-A in the
Punjab Mu-
nicipal Act,
11.

77 After Section 193 of the said Act, the following section shall be inserted, namely:—

Power of
committee to
effect modifi-
cation of a
sanctioned
plan of a
building be-
fore its com-
pletion.

“ 193-A. If at any time before the completion of a building of which the erection has been sanctioned under Section 193 the committee finds that any modification of the sanctioned plan is necessary, the committee may, subject to compensation for any loss to which the owner may be put, direct that the building be modified accordingly.”

Substitution
of a new sec-
tion for Sec-
tion 194 of
the Punjab
Municipal
Act, 1911.

78. For Section 194 of the said Act the following section shall be substituted, namely:—

Lapse of
sanction after
one year from
the date of
the sanction

“ 194. Every sanction for the erection or re-erection of any building which shall be given or be deemed to have been given, by a committee, shall remain in force for one year only from the date of such sanction, or for such longer period as the committee may have allowed when conveying sanction under Section 189. Should the erection or re-erection of the building not have been commenced within one year and completed within two years or such longer period as may have been allowed by the committee the sanction shall be

deemed to have lapsed; but such lapse shall not bar any subsequent application for fresh sanction under the foregoing provisions of the Act."

79. For Section 195 of the said Act, the following section shall be substituted, namely:—

Substitutio
of a new Se-
tion 195 of
the Punja
Municipal
Act, 1911.

" 195. Should a building be begun, erected or re-erected—

Penalty for
disobedienc

" (a) without sanction as required by Section 189 (1); or

" (b) without notice as required by Section 189 (2); or

" (c) when sanction has been refused,

the committee may by notice delivered to the owner within six months from the completion of the building require the building to be altered or demolished as it may deem necessary within the period specified in such notice; and should be begun or re-erected—

" (d) in contravention of the terms of any sanction granted; or

" (e) when the sanction has lapsed; or

" (f) in contravention of any bye-law made under Section 190; or, in the case of a building of which the erection has been deemed to be sanctioned under Section 193 (4), if it contravenes any bye-law or any scheme sanctioned under Section 192

the committee may by notice to be delivered to the owner within six months from the completion of the building require the building to be altered in such manner as it may deem necessary, within the period specified in such notice:

" Provided that the committee may, instead of requiring the alteration or demolition of any such building, accept by way of compensation such sum as it may deem reasonable;

" Provided also that the committee shall require a building to be demolished or altered so far as is necessary to avoid contravention of a building scheme drawn up under Section 192."

80. For sub-section (2) and the proviso to Section 196 of the said Act, the following sub-section and proviso shall be substituted, namely:—

Amend-
of S.
196 of
Punjab
Municipal
1911.

" (2) The committee shall make reasonable compensation to the owner for any damage or loss which he may sustain in consequence of the prohibition of the re erection of any building or part of a building except in so far as the prohibition is necessary under any bye-law:

" Provided that committee shall make full compensation to the owner for any damage he may sustain in consequence of his building or any part thereof being set back, unless for a period of three years or more immediately preceding such notice the building has by reason of its being in a ruinous or dangerous condition become unfit for human habitation or unless an order of prohibition issued under Section 116 has been and still is in force in respect of such building."

81. For Section 197 of the said Act the following section shall be substituted, namely:—

Substitution
of a new sec-
tion for Sec-
tion 197 of
the Punjab
Municipal
Act, 1911.

Power of
committee to
regulate the
manufacture,
repairation
and sale of
food and
drink.

" 197. The committee may, and shall if so required by the local Government, by bye-law—

" (a) prohibit the manufacture, sale, or preparation or exposure for sale, of any specified articles of food or drink, in any place or premises not licensed by the committee;

" (b) regulate the hours and manner of transport within the municipality of any specified articles of food or drink, and prescribe the route by which such articles shall be carried;

" (c) prohibit the sale of milk, butter, ghi, curd, meat, game, fish and poultry by persons not licensed by the committee;

" (d) prohibit the import into the municipality for sale of milk, cream, butter, ghi, curd, meat, game, fish and poultry by persons not licensed by the committee;

" (e) make regulations for the grant and withdrawal of licenses and the levying of fees therefor under this section:

" Provided that no person shall be punishable for breach of any bye-law made under clause (a) of this section by reason of the continuance of such manufacture, preparation or exposure for sale, or sale upon any premises which are, at the time of the making of such bye law, used for such purpose until he has received from the committee six months'

notice in writing to discontinue such manufacture, preparation or exposure for such sale, or such sale in such premises:

" Provided further that nothing herein contained shall affect the operation of Section 43 of the Punjab Laws Act, 1872, and the rules made thereunder."

82. In Section 205 of the said Act, after clause (c) the following clause shall be inserted, namely:—

Amendme
of Secti
205 of t
Punjab M
unicipal A
1911

" (d) to enter into any building or on any land for the purpose of ascertaining whether any building is being or has been erected or re-erected without sanction or in contravention of any sanction given by the committee or of any bye-laws made under Section 190 or of any scheme sanctioned under Section 192 and to take such measurements and do any other such acts as may be necessary for such purpose."

83. For sub-section (1) of Section 211 of the said Act, the following sub-section shall be substituted, namely:—

Amendme
of Secti
211 of t
Punjab M
unicipal A
1911.

" (1) The Medical Officer of Health or any other officer authorised by the committee may enter, at any time, after three hours' notice, into any building or premises in which any infectious disease is reported or suspected to exist, for the purpose of inspecting such building or premises."

84. For sub-section (2) of Section 224 of the said Act, the following sub-section shall be substituted, namely:—

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224 of t
Punjab M
unicipal A
1911.

" (2) Should any dispute, for the settlement of which no express provision is made by any other section, arise touching the amount of any compensation which the committee is by this Act required to pay or empowered to receive for injury to or in respect of any building or land, it shall be settled in such manner as the parties may agree, or, in default of agreement, in the manner provided by the Land Acquisition Act, 1894, with reference to the acquisition of and payment of compensation for land for public purposes so far as it can be made applicable."

85. For clause (b) of sub-section (1) of Section 225 of the said Act, the following clause shall be substituted, namely:—

Amendm
of Sect
225 of
Punjab M
unicipal A
1911.

" (b) by a notice from a committee under Section 171 requiring a street to be drained, levelled, paved, flagged, metalled or provided with proper means of lighting, or declaring a street to be a public street, or under Section 195 requiring the alteration or demolition of a building, or "

Amendment
of Section
28 of the
Punjab Mu-
nicipal Act,
1911.

86. In the Explanation to Section 288 of the said Act, in first line between the word "authorize" and the word "persons" the word "any" shall be inserted, and for the word "persons" the word "person" shall be substituted, and between the word "person" as substituted and the words "to make" the following shall be inserted, namely:—

"and shall be deemed to have authorized any person appointed to this end by the local Government"

Amendment
of Section
29 of the
Punjab Mu-
nicipal Act,
1911.

87. In Section 229 of the said Act, after sub-section (4), the following sub-section shall be added, namely:—

"(5) If the committee has not authorized any of the officers specified in sub-section (1), it shall, if so required by the Commissioner, give such authorisation to any of the officers specified in sub-section (1), and shall not withdraw authorisation given on such requisition without the sanction of the Commissioner."

Substitution
of a new sec-
tion for Sec-
tion 231 of
the Punjab
Municipal
Act, 1911.

88. For Section 231 of the said Act the following section shall be substituted, namely:—

Control by
Commissioner and
Deputy Com-
missioner

"231. (1) The Commissioner or the Deputy Commissioner within their respective charges, or any official not below the rank of Extra Assistant Commissioner authorized in writing by the Commissioner in the case of municipalities of the first class or the Deputy Commissioner in the case of municipalities of the second class or any person empowered by the local Government in this behalf by a general or special order, may:—

"(a) enter on, inspect and survey, or cause to be entered on, inspected and surveyed, any immovable property occupied by any committee or joint committee, or any work in progress under its direction;

"(b) by order in writing addressed to the secretary call for and inspect or cause to be inspected any book or document in the possession or under the control of any committee or joint committee and the member or servant of the committee in possession of such book or document shall immediately place such book or document at the disposal of the secretary, who shall immediately comply with such order and shall immediately inform the President of the requisition. He shall also bring the matter to the notice of the committee at its meeting next following.

“(c) by order in writing addressed to the secretary require any such committee or joint committee to furnish within a specified period such statements, accounts, reports and copies of documents relating to the proceedings or duties of the committee as he may think fit to call for;

“(d) inquire generally into the affairs of a committee or joint committee with a view to ascertaining whether a municipality is being satisfactorily administered, and for the purposes of such inquiry make use of any property of the committee, and of the powers mentioned in clauses (a), (b) and (c), and the members, officers, and servants of the committee shall render such assistance in the inquiry as may be deemed necessary.

“*Explanation.*—(1) Any person so empowered shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code.

“(2) The Commissioner or the Deputy Commissioner may record in writing for the consideration of any such committee or joint committee any observations that he may think proper in regard to the proceedings or duties of the committee.

“(3) Every committee shall submit such periodical reports to the Deputy Commissioner or other authority as the local Government may direct.”

89. For Section 232 of the said Act the following section shall be substituted, namely :—

Substitution of a new section for Section 232 of the Punjab Municipal Act, 1911.

“232. The Commissioner or Deputy Commissioner may, by order in writing, suspend the execution of any resolution or order of a committee or joint committee, or prohibit the doing of any Act which is about to be done, or is being done in pursuance of or under cover of this Act, or in pursuance of any sanction or permission granted by the committee in the exercise of its powers under the Act, if, in his opinion, the resolution, order or act is in excess of the powers conferred by law or contrary to the interests of the public or likely to cause waste or damage of municipal funds or property, or the execution of the resolution or order, or the doing of the act, is likely to lead to a breach of the peace, to encourage lawlessness or to cause injury or annoyance to the public or to any class or body of persons.”

Powers to suspend an resolution or order of committee.

Amendment
of Section
234 of the
Punjab Mu-
nicipal Act,
1911.

90. For sub-section (1) of Section 234 of said Act, the following sub-section shall be substituted, namely:—

“(1) When the Commissioner, after due enquiry, is satisfied that a committee of the first class has made default in performing any duty imposed upon it by this Act, or by any order or rule under this Act, he may, by an order in writing, fix a period for the performance of that duty ; and, should it not be performed within the period so fixed, he may appoint some person to perform it, and may direct that the expense thereof shall be paid within such time as he may fix by the committee.”

Amendment
of Section
236 of the
Punjab Mu-
nicipal Act,
1911.

91. For sub-section (2) of Section 236 of the said Act the following sub-section shall be substituted, namely:—

“(2) The local Government may exercise all powers necessary for the performance of this duty and may among other things, by order in writing, annul or modify any proceeding which it may consider not to be in conformity with law or with such rules as aforesaid, or for the reasons which would in its opinion justify an order by the Commissioner or Deputy Commissioner under Section 232.”

Substitution
of a new sec-
tion for Sec-
tion 237 of
the Punjab
Municipal
Act, 1911.

92. For Section 237 of the said Act the following section shall be substituted, namely:—

“237. Notwithstanding anything in this Act, the local Government shall have the power of reversing or modifying any order of any officer of the local Government passed or purporting to have been passed under this Act, if it considers it to be not in accordance with the said Act or the rules or to be for any reason inexpedient, and generally for carrying out the purposes of this Act the local Government shall exercise over its officers and the Commissioner shall exercise over the Deputy Commissioner all powers of superintendence, direction and control.”

General
powers of
local Govern-
ment over a
Commissioner.

93. (1) In Section 240 of the said Act -

(ii) for clause (g) the following clause shall be substituted, namely:—

“(g) regulating the procedure for elections under this Act, the contribution towards election expenses by candidates, the deposit of security by candidates and the conditions of forfeiture of such deposits; ”

Amendment
of Section
240 of the
Punjab Mu-
nicipal Act,
1911.

(i) for clause (q) the following clause shall be substituted, namely:—

“(q) for the preparation of plans and estimates for works partly or wholly to be constructed at the expense of committees, and for the preparation and periodical revision of maps and registers made under sub-section(3) of Section 56 for the authorities by which and the conditions, subject to which such plans, estimates, maps and registers are to be prepared and sanctioned;”

(iii) After clause (zz) the following clause shall be inserted, namely:—

“(zzz) for the same purposes as those for which a committee may make bye-laws under the provisions of Sections 31, 188, 189, 190 or 197;”

(2) After sub-section (6) the following sub-section shall be added, namely:—

“(7) Notwithstanding anything hereinbefore contained the local Government shall not make rules under clause (zzz) of sub-section (1) for a municipality unless the committee has been required by the local Government to make bye-laws under Section 31, Section 188, Section 189, Section 190 or Section 197 and has failed to make any such bye-laws, or having made them has failed to obtain their confirmation by the local Government as required by sub-section (1) of Section 201 within *nine months* of the date of the order of the local Government requiring them to be made, and any rules made by the local government under clause (zzz) of sub-section (2) shall have effect as if they were, and shall be deemed for all purposes to be, bye-laws made by the committee.”

94. Section 240-A of the said Act shall be omitted.

Omission of Section 240-A of Punjab Municipal Act 1911.

95. After Section 245 of the said Act, the following new chapter shall be added, namely:—

‘ CHAPTER XIV.

MUNICIPAL ELECTION INQUIRIES.

Insertion of new Chapter XIV in Punjab Municipal Act 1911.

‘ 246. In this chapter unless there is anything repugnant in the subject or context—

Definition

“(a) “commission” means a person or persons appointed by the local Government to hold an inquiry in respect of an election under this Act.

‘ (b) “ costs ” means all costs, charges and expenses of or incidental to an inquiry,

‘ (c) “ election ” means any election held under the provisions of this Act or of any rules made thereunder,

‘ (d) “ inquiry ” means an inquiry in respect of an election by the Commission,

‘ (e) “ pleader ” means any person entitled to appear and plead for another in civil court, and includes an advocate, a vakil, and an attorney of a High Court.

Appoint-
ment of Com-
mission by
the local
Government.

‘ 247. The local Government may appoint a Commission consisting of one or more persons to hold an inquiry.

Powers of
Commission

‘ 248. In respect of the following matters a Commission shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit:—

‘ (a) discovery and inspection,

‘ (b) enforcing the attendance of witnesses and requiring the deposit of their expenses,

‘ (c) compelling the production of documents,

‘ (d) examining witnesses on oath,

‘ (e) granting adjournments,

‘ (f) reception of evidence taken on affidavit, and

‘ (g) issuing commissions for the examination of witnesses;

and may summon and examine *suo motu* any person whose evidence appears to be material ; and shall be deemed to be a Civil Court within the meaning of Sections 480 and 482 of the Code of Criminal Procedure, 1898.

Application
of the Indian
Evidence
Act, 1872.

‘ 249. The provisions of the Indian Evidence Act, 1872, shall, subject to the provisions of this Chapter, be deemed to apply in all respects to an inquiry.

Stamping
document.

‘ 250. Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence on the ground that it is not duly stamped or registered.

Witness not
excused
from answer-
ing on
ground that
answer will
incriminate.

‘ 251. (1) No witness shall be excused from answering any question relating to any matter relevant to a matter in issue in an inquiry upon the ground that the answer to such question will incriminate or may tend, directly or indirectly to incriminate him, or that it will expose, or tend, directly or indirectly, to expose him to a penalty or forfeiture of any kind ;

* Provided that—

- ‘ (i) no person who has voted at an election shall be required to state for whom he has voted ; and
- ‘ (ii) a witness who, in the opinion of the Commission, has answered truly all questions which he has been required by the said Commission to answer shall be entitled to receive a certificate of indemnity and such certificate may be pleaded by such person in any court and shall be deemed to be a full and complete defence to or upon any charge under Chapter IX-A of the Indian Penal Code arising out of the matter to which such certificate relates, nor shall any such answer be admissible in evidence against him in any suit or other proceeding.

‘ (2) Nothing in sub-section (1) shall be deemed to relieve a person receiving a certificate of indemnity from any disqualification in connection with an election imposed by any law or any rule having the force of law.

‘ 252. Any appearance, application or act before the Commission may be made or done by the party in person or by a pleader duly appointed to act on his behalf :

Appearan
applicat i
or Act bef
Commissio

‘ Provided that any such appearance shall, if the Commission so directs, be made by the party in person.

‘ 253. The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commission to such person, and shall, unless the Commission otherwise directs, be deemed to be part of the costs.

Expen
incurred
attending
give eviden
to be part
costs.

‘ 254. At the conclusion of the inquiry the Commission shall submit a report of its findings to the local Government, if the inquiry concerns an election held in a municipality of the first class, and to the Commissioner in any other case, and such report shall include the opinion of the Commission on the amount of costs, including counsel's fees as the Commission may deem fit, to be paid, and the persons by whom and to whom such costs shall be paid.

Report
Commissio

‘ 255. On receiving the report of the Commission the local Government in the case of an election held in a municipality of the first class, and the Commissioner in any other case, shall pass orders either declaring the candidate duly elected or declaring the election to be void, and such orders shall be notified in the Gazette. Such orders shall be final and shall specify the amount of costs to be paid, and the person or persons by whom and to whom such costs shall be paid :

Comm
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local Gover
ment if
agree m e
with findin
of the Co
mission
pass ord
accordingly

' Provided that the Commissioner or the local Government before passing final orders may remand any case for further inquiry or refer any point arising in any case to a civil court for opinion ; and the civil court shall deal with any case forwarded to it as nearly as may be according to the procedure applicable under the Code of Civil Procedure, 1908, to the hearing of appeals.

Payment of
costs.

' 256. A certified copy of any order passed by the local Government or by the Commissioner under Section 255 regarding the cost of the inquiry may be produced before the principal civil court of original jurisdiction within the local limits of whose jurisdiction any person directed by such order to pay any sum of money has a place of residence or business, and such court shall execute such order or cause it to be executed in the same manner and by the same procedure as if it were a decree for the payment of money made by itself in a suit.

Secrecy of
voting.

' 257. (1) Every officer, clerk, agent or other person who performs any duties in connection with the recording or counting of votes at an election shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorized by or under any law) communicate to any person any information calculated to violate such secrecy.

' (2) Any person who wilfully acts in contravention of the provisions of this section shall be punished with imprisonment of either description for a term not exceeding three months, or with fine, or with both.

Power to
make rules.

' 258. The local Government may make rules consistent with this act, to carry out the purposes of this chapter, and all such rules shall be subject to previous publication. '

Statement of objects and reasons. The main objects of the Bill are to give the local Government through its officers power to see that both the spirit and the letter of the Act are more strictly observed by members and servants of committees than has heretofore been the case, and also to solve the housing and sanitation problems of municipalities both by enforcing more strictly the responsibility of committees for the regulation of buildings and by giving to the local Government and to committees wider powers to frame and enforce building and town planning schemes. At the same time opportunity is being taken of amending sections which experience has proved to be defective and decisions of the High Court have shown to be unsatisfactorily worded.

GOKAL CHAND NARANG,
Member In-charge,

Notes on clauses are omitted,

THE PUNJAB MUNICIPAL (EXECUTIVE OFFICER) ACT, 1931.

THE PUNJAB ACT, II OF 1931.

[Received the assent of His Excellency the Governor on the 2nd July 1931, and that of His Excellency the Viceroy and Governor General on the 2nd September 1931, and was first published in the Punjab Gazette, Extraordinary, of the 18th September 1931.]

AN ACT TO PROVIDE FOR THE APPOINTMENT AND POWERS OF EXECUTIVE OFFICERS IN MUNICIPALITIES IN THE PUNJAB AND FOR THAT PURPOSE TO AMEND THE PUNJAB MUNICIPAL ACT, 1911.

WHEREAS it is expedient to provide for the appointment and powers of Executive Officers in municipalities in the Punjab and to amend the Punjab Municipal Act, 1911, for that purpose, it is hereby enacted as follows :—

Preamble

1. (1) This Act may be called the Punjab Municipal (Executive Officer) Act, 1931.

Short title and extent of the Act.

(2) It may by notification be extended by the local Government to any municipality in the Punjab.

(3) It shall come into force on such date as the local Government may, by notification, appoint in this behalf.

Notes.

Extension.—The Act was extended to the following municipalities, *vide* Notification No. 31221, dated 21st October 1931:—Ambala, Lahore, Amritsar, Jullundur, Multan, Sialkote, Khem Karan, Bhawani. Later on by a further Notification No. 35421 dated 9th November 1932 the Act was extended to Kasur.

Clause 3.—The Act came into force on 16th October 1931 *vide* Punjab Government (Legislative Department) Notification No. 30693 dated 14th October 1931.

2. In this Act unless there is something repugnant in the subject or the context—

Definition

(a) “contract” includes a transfer of property ;

(b) “the committee” means the municipal committee to which the Act has been, by notification, extended ;

(c) “the Municipal Act” means the Punjab Municipal Act, 1911.

Notes.

Contract.—The definition is not restrictive, as the use of the word “include” shows. For the definition of the term, *see* Section 2 (h) of the Indian Contract Act,

Includes.—See notes on p. 38 of the Municipal Act.

Transfer of property.—*See* Section 5 of the Transfer of Property Act. Under this Act the word "Contract" includes "Transfer".

Appoint-
ment and
pay of the
Executive
Officer.

3. (1) Notwithstanding anything to the contrary contained in Sections 26 and 27 of the Municipal Act, the committee shall by resolution to be passed, by not less than five-eighths of the total number of members constituting the committee for the time being, at a meeting convened for the purpose of appointing an Executive Officer at which no other business may be transacted, appoint, within three months from the date of the notification issued under sub-section (2) of Section 1, a person, with the approval of the local Government as Executive Officer, for a renewable period of five years on such rate of pay not exceeding one thousand and five hundred rupees inclusive of all allowances, as it may deem fit :

Provided that if the appointment is renewed the maximum salary inclusive of all allowances shall not exceed Rs. 2,000.

(2) If at the meeting convened for the purpose of appointing an Executive Officer a resolution of appointment cannot be passed through failure of any candidate, to secure the prescribed five-eighths majority, the chairman shall, on requisition made in writing by not less than one-third of the total number of members constituting the committee for the time being, convene another meeting to be held within fourteen days:

Provided always that such meeting shall be held within three months from the date of the notification issued under sub-section (2) of Section 1.

(3) The resolution of appointment of an Executive Officer, whether considered at an adjourned meeting or at a meeting convened under sub-section (2), shall not be deemed to be passed unless by the majority prescribed in sub-section (1).

(4) If the committee fails to appoint an Executive Officer within three months from the date of notification issued under sub-section (2) of Section 1, the local Government may appoint any person as Executive Officer of the committee for a renewable period not exceeding five years on such rate of monthly pay not exceeding Rs. 1,500 inclusive of all allowances as it may deem fit :

Provided that if the appointment is renewed the maximum salary inclusive of all allowances shall not exceed Rs. 2,000.

(5) When a member of the committee is appointed Executive Officer, he shall on his appointment cease to be a member of the committee.

(6) The remuneration of such Executive Officer shall be payable by the committee from the municipal fund.

(7) The Executive Officer may at any time be suspended from office by the local Government and shall be so suspended or removed if at a meeting of the committee convened to consider the question of his suspension or removal not less than five-eighths of the total number of members constituting the committee for the time being vote in favour of his suspension or removal, and if the Executive Officer is suspended the committee shall appoint some person with the approval of the local Government to officiate as Executive Officer.

(8) Leave may be granted to the Executive Officer by the committee, and whenever such leave is granted for a period exceeding one month the committee shall appoint some person, with the approval of local Government, to officiate as Executive Officer:

Provided that if the period of leave does not exceed one month the President or in his absence the Vice-President shall without remuneration exercise the powers of Executive Officer for the period of such leave.

(9) Whenever an Executive Officer dies, resigns or is removed the committee shall, within three months of his death, resignation or removal, appoint another person to be Executive Officer in the manner provided in sub-sections (1) to (3), and if the committee fails to appoint such a person within such period the local Government may appoint such a person in the manner provided in sub-section (4):

Provided that the President or in his absence the Vice-President shall, without remuneration, exercise the powers of Executive Officer until another Executive Officer is appointed.

Notes.

Analogous Law:—

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| S. 67 (1) (ii) Bengal Municipal Act, XV of 1932. | Act, III of 1923. |
| Ss. 20 & 21, Behar and Orissa Municipal Act, 1922. | S. 13, Cantonment Act, II of 1924. |
| S. 33, Bombay Municipal Boroughs Act, 1925. | Ss. 7, 8 & 13, Madras City Municipal Act, 1919. |
| Ss. 186-A & 186-C, Bombay District Municipal Act, III of 1901. | S. 12-C, Madras District Municipal Act, V of 1920. |
| Ss. 54 & 57, Bombay City Municipal Act, III of 1888. | S. 27, Rangoon City Municipal Act, 1922. |
| S. 51, Calcutta City Municipal | Ss. 57 & 65, U. P. Municipalities Act, 1916. |

Clause 1.—This lays down the procedure for the appointment of the Executive Officer for the committee to which the

Act is extended. The meeting convened for the purpose is not to be governed by Sections 26 and 27 of the Municipal Act. The meeting convened for the appointment of the Executive Officer is neither an ordinary meeting nor a special meeting, as contemplated by S. 26 of the Municipal Act. The quorum for such a meeting is a special quorum and not one contemplated by Section 27 of the Municipal Act.

The appointment of an Executive Officer is not peculiar to the Punjab and some corresponding officer such as Municipal Commissioner, Chief Officer, Executive Authority or the Chairman with similar powers is required to be appointed under other provincial and presidency towns municipal Acts, as the examination of the corresponding provisions will show. Under Bengal Municipal Act, *vide* Section 67 (1) (ii) of Act, XV of 1932, the committees have power to appoint an Executive Officer and in the absence of such appointment the chairman exercises the power of Executive Officer. Under Behar and Orissa Municipal Act the Chairman of the Municipal Board is the corresponding officer. Under Bombay District Municipal Act, the municipal commissioner is the corresponding officer while under the Madras Municipal City Act, the corresponding officer is designated simply "Commissioner." Under the Bombay Municipal Boroughs' Act, the corresponding official is called the "chief officer." Under Calcutta Municipal Act, such an officer is called the "Chief Executive Officer" while under Madras District Municipal Act, the Commissioner is the corresponding officer. In Rangoon, he is styled simply a "commissioner". In U. P. the corresponding officer like the Punjab is called the "Executive Officer."

The method of appointment, however, differs in different provinces and presidency Towns. In Bombay city and Madras city the appointment is made by Governor in Council. Under Madras District Municipal Act the appointment in the first instance is vested in the Governor in Council, while under Bengal Municipal Act and Bombay Boroughs Municipal Act, appointment vests in the Committee. For dismissal a certain majority generally two-thirds of the whole committee is required. In Rangoon, appointment and dismissal vest in the corporation. In the Punjab the appointment in the first instance vests in the committee if a specified majority of the whole committee votes for the appointment. Such appointment requires the approval of the local Government. If at the first meeting a candidate fails to secure the required majority an opportunity is again afforded for another meeting to be held for the purpose within a prescribed time. If within the prescribed time the Com-

mittee fails to appoint the Executive Officer by the requisite majority of votes, then the local Government steps in and appoints one.

Prescribed majority.—Fractions cannot be disregarded. In case of Lahore, the total strength of the members is 45 and five-eighths of the required majority will be 28½. Twenty-eight cannot be taken as a prescribed majority, twenty-nine will, therefore, constitute the required majority.

Period of appointment.—The period of appointment is not to exceed five years and this period is renewable.

Clause 7.—The removal or suspension vests in the local Government while the local Government will have to suspend or remove an Executive Officer, if so required by a majority of five-eighths of the total number of members constituting the committee.

The examination of the corresponding provisions as given under an analogous law will show that similar power of dismissal vests in two-thirds majority of the whole committee. In the case of Rangoon it is three-fifths.

Clause 8.—Where an Executive Officer is granted leave not exceeding one month, the office devolves on President or in his absence on the Vice-President but the President or the Vice-President cannot get any remuneration. If the period of leave exceeds one month, an officiating appointment will have to be made with the approval of the local Government. Officiating appointment is not required to be governed by clauses (1) and (3) of the section.

Clause 9.—In the case of death, resignation or removal of the Executive Officer, however, a new Executive Officer will have to be appointed within three months. This new appointment is to be made in accordance with the procedure laid down in clauses (1) and (3) of Section 3. Till the new appointment is made and approved, the President and in his absence the Vice-President will officiate as Executive Officer without remuneration.

4. In a municipality in which an Executive Officer has been appointed—

Powers of
the Executive
Officer.

- (a) the executive power for the purpose of carrying on the administration of the municipality shall, subject to the provisions of this Act and of any rules made under this Act, or under the Municipal Act, vest in the Executive Officer;
- (b) the powers conferred and duties imposed upon, the functions vested in, and the objections to be tendered and notice given to, the committee under

the sections of the Municipal Act mentioned in schedule I, shall not be exercised or performed by, vested in, or be tendered or given to, the committee, but may be exercised or shall be performed by, or shall vest in, or shall be tendered or given to, the Executive Officer, provided that—

- (i) the power conferred by Section 39 of the Municipal Act shall not be exercised by the Executive Officer and may be exercised by the committee in respect of the appointment of any officer or servant of the committee to a post for which the monthly remuneration exceeds Rs. 45 in the case of the municipality of Lahore and Rs. 25 in the case of other municipalities, and in respect of the power of removal or dismissal of any officer or servant whose monthly remuneration exceeds Rs. 45, provided that the Executive Officer shall dismiss an employee if required by the committee to do so;
 - (ii) the power to revise the valuation and assessment conferred by Section 65 of the Municipal Act and the power to amend the assessment list conferred by sub-clause (1) of Section 67 of the Municipal Act shall be exercised by a sub-committee consisting of the Executive Officer and two members of the committee appointed by the committee for the purpose;
 - (iii) the power of the Executive Officer to withhold the grant of a license for any of the trades or purposes specified in Sections 121, 122 of the Municipal Act or to withhold a written permission under Section 124 of the Municipal Act may by bye-law be made subject to revision by the committee;
 - (iv) the exercise or discharge by the Executive Officer of any power, duty or function thus conferred, imposed or vested in him, shall be subject to such restrictions, limitations and conditions as may be imposed by any rules made by the local Government under the Municipal Act upon the exercise or discharge of such power, duty or function by the committee;
- (c) the Municipal Act shall be deemed to have been amended in the manner set forth in schedule II;

- (d) no bye-laws inconsistent with this Act shall be made by the committee in exercise of the powers conferred by Section 31 of the Municipal Act and, if any such bye-laws have been made, they shall be deemed to have been cancelled to the extent to which they are thus inconsistent;
- (e) if in any bye-law made by the committee in exercise of the powers conferred by Section 188, 189, 197 or 198 or in any rule made in exercise of the powers conferred by Section 3 of the Hackney Carriage Act, 1879, it is provided that notice shall be given to or licences granted by the committee, such bye-law or rule shall be deemed to have been amended so as to provide that subject to bye-laws made under the Municipal Act or rule made under this Act such notice shall be given to, or such license granted by, the Executive Officer.

Notes.

Analogous Law:—

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| S. 68, Bengal Municipal Act, XV of 1932. | S. 52, Calcutta City Municipal Act, III of 1923. |
| S. 37 (2), Behar and Orissa Municipal Act, 1922. | S. 9, 23 & 90, Madras City Municipal Act, 1919. |
| Ss. 30 (2) & 34, Bombay Municipal Boroughs Act, 1925. | S. 6, 13-A & 19, Madras District Municipal Act, V of 1920. |
| Ss. 186-G, 186-J. L., Bombay District Municipal Act, III of 1901. | S. 27 & Schedule Chapter IV, Rule 3, Rangoon City Municipal Act, 1922. |
| Ss. 4, 64 (3), 80, A (2), 83 Bombay City Municipal Act, III of 1888. | S. 60, 61 & 112, Schedule II U.P. Municipalities Act, 1916. |

Executive Power.—This Act or the Municipal Act nowhere defines what powers are executive and what powers are legislative or deliberative. Some idea of the executive powers can be formed from the powers to be exercised by, the functions vested in and duties imposed on, Executive Officers under sections detailed in schedule I. Besides vesting executive powers in Executive Officers, certain deliberative powers have also been conferred on the Executive Officer. In order to render such exercise the act of the committee the right of appeal or revision to the council has been conferred. Similarly, powers to be exercised by or duties to be discharged and functions to vest in, the Executive Officer are further subject to rules to be made by local Government under Section 11. The right of appointment and dismissal of Municipal Staff is generally given to the executive side of the municipal administration.

Under the Act this right has been conferred upon Executive Officer under certain limitations.

Under Section 31, clauses (f), (g), and (h), of the Municipal Act, the committees were empowered to frame bye-laws as to executive powers of sub-committees, presidents or vice-presidents, and as to the executive powers of officers and servants, while the right of appeal against such executive orders could also be given under these bye-laws. All such bye-laws, if inconsistent with the provisions of this Act, shall be deemed to be cancelled. Committees to which this Act is applied, will have no powers to frame bye-laws vesting executive powers in sub-committees or presidents or vice-presidents or in any servant or officer.

Appointment of sub-committees—The committees are still empowered to appoint sub-committees to report to committee on such matters as do not vest in the Executive Officers but such committees cannot be invested with any executive powers or with powers, duties or functions which are required to be exercised or discharged by or vest in the Executive Officers.

Bye-laws deemed to be cancelled.—All existing bye-laws which are inconsistent with the Executive Officer's Act must be deemed to be cancelled. For instance, Bye-laws Nos. 39, 40, 41, parts of 42, 43, 45, 47, 50 & 52 of the Lahore Municipal Committee's business bye-laws must be taken to have been cancelled.

Clause (e).—Similarly, some of the bye-laws under Ss. 188, 189, 197 or 198 or Rules under Section 3 of Hackney Carriage Act, 1879, provide for the giving of notice to committee or for grant of license by committee. These must be deemed to have been amended so as to provide for the giving of notice to the Executive Officers or for the grant of license by the Executive Officer.

Presumption regarding exercise of powers by Executive Officers. There is a presumption that the powers granted will not be abused. See Notes on p. 428.

Grant of license to regulate trade.—See notes under S. 121 of the Municipal Act, pp. 424-44.

5. The Executive Officer may exercise all or any of the powers conferred upon the Secretary of the committee by the Municipal Act or by any rule or bye-law made thereunder or under any other Act.

Executive
Officer to
have powers
of Secretary.

Notes.

Analogous Law:—

Cf. Schedule 1, chapter VI of Rangoon City Municipal Act, 1922.

Powers of Secretary.—Under the Municipal Act, Sections 94, 173 and 215 confer upon the Secretary certain powers. These will also vest in the Executive Officer. Similarly, powers conferred by any rule or bye-law made under the Municipal Act or under any other Act may also be exercised by the Executive Officer.

6. (1) Every contract to be entered into by the committee shall be made on behalf of the committee by the Executive Officer:

Contract

Provided that the Executive Officer shall be bound by any resolution of the committee fixing terms, rates or maximum prices in the particular case or any class of cases.

(2) No contract affecting immovable property or involving a sum exceeding such sum as the committee may fix shall be made by the Executive Officer unless it has been sanctioned by the committee.

(3) Every contract made by the Executive Officer shall be reported to the committee within fifteen days of its being made.

(4) Every contract made by the Executive Officer on behalf of the committee shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged:

Provided that every contract involving a sum exceeding one hundred rupees or affecting immovable property shall be in writing and shall be sealed with the common seal of the committee.

(5) The common seal of the committee shall remain in the custody of the Executive Officer and shall not be affixed to any contract or other instrument except in the presence of the Executive Officer who shall sign the contract in token that the same was sealed in his presence.

(6) No contract executed otherwise than as provided in this section shall be binding on the committee:

Provided that, when work is given on contract at unit rates and the number of units is not precisely determinable, the contract shall not be deemed to contravene the provisions of this section merely by reason of the fact that the pecuniary limits prescribed in sub-section (2) or sub-section (4) are eventually exceeded.

Notes.*Analogous Law:—*

Ss. 48 (4) (d), 48 (b) & 49, Bombay Municipal Boroughs Act, 1925.	Ss. 80, 81 & 83, Madras City Municipal Act, 1919.
Ss. (2) 180-N, 186-O, Bombay District Municipal Act, III of 1920.	Ss. 68 & 69, Madras District Municipal Act, 1920.
Ss. 69 (a) (c) (d), 70 & 71, Bombay City Municipal Act, III of 1888.	S. 177, Schedule I, Chapter VI, Rules 1-6, Rangoon City Municipal Act, 1922.
	Ss. 97 & 98, U. P. Municipalities Act, 1916.

Notes.

Sections 46 and 47 of the Municipal Act must be deemed to have been omitted. In case of municipalities to which the Executive Officer's Act is extended contracts and transfers will be governed by S. 6. Instead of the committee making contracts and observing the formalities required to be observed under Ss. 46 and 47 of the Municipal Act, every contract shall be made by the Executive Officer, who is required to observe the provisions and formalities laid down in this section.

Sanction.—No contract affecting immovable property can be made by an Executive Officer unless the committee has sanctioned such a contract. Similarly, the Executive Officer cannot enter into any contract involving any sum exceeding the sum fixed by the committee for contracts to be entered by the Executive Officer.

Clause 4.—This clause lays down the formalities to be observed by Executive Officers in making the contracts. These formalities are mandatory, and unless the contract is made in accordance with these formalities, a contract will not be binding on the committee. For Notes *see* commentary on Ss. 46 and 47 of the Municipal Act, pp. 192–217.

Clause 5.—There is no corresponding provision in the Municipal Act. The Executive Officers Act requires an additional formality which is not specifically required under the Municipal Act.

Liability of the committee.—If the contract does not comply with the formalities, the contract cannot be enforced against the committee. *See* Notes under Section 47 of the Municipal Act.

Clause 6.—*See* notes on pages 206 and 207 of this book.

Proviso.—There is no corresponding provision under the Municipal Act. The judicial decisions regarding the value of contract recognize the principle of this provision. *See* notes on pp. 211 and 212, under the heading “Limit of value”.

7. (1) *The committee may delegate the powers conferred upon it by Section 39 of Punjab Municipal Act, 1911, to the Civil Surgeon of the District or to an officer of the Department of Public Instruction.*

Delegation
of powers to
the Executive
Officers

7. (2) **The Executive Officer may with the previous sanction of the committee and shall, if so required by the committee, delegate to any other officer or servant of the committee all or any of the powers, duties or functions conferred or imposed upon or vested in him by Section 4, 5 or 6, except the powers, duties or functions conferred or imposed upon or vested in the committee by Sections 63, 64, 65, 66, 67, 68, 72, 73, 74, 75, 76, 77, 80, 81, 82, 189, 193, 195, 195-A or 229 of the Municipal Act:—or to the Civil Surgeon of the District or to an officer of the Department of Public Instruction, the powers under Section 39 of the Punjab Municipal Act, 1911 conferred upon him by Section 4:**

Provided that—

- (a) **such delegation shall be in writing and shall specify the name or official designation of the person to whom the delegation is made;**
- (b) **the executive officer shall not, except to the Civil Surgeon of the district or to an officer of the Department of Public Instruction delegate his power to make appointments to offices carrying a remuneration of more than fifteen rupees per mensem or to remove or dismiss any employee holding an office carrying such remuneration;**
- (c) **the executive officer shall not delegate his power to make contracts involving an expenditure exceeding one hundred rupees or to acquire, sell or lease immovable property or to dispose of movable property of a value exceeding fifty rupees; and**
- (d) **the exercise or discharge by an officer or servant of any power, duty or function delegated to him shall be subject to such restrictions, limitations and conditions if any, as may be laid down by the executive officer, and shall also be subject to his control and revision, but the delegation shall not divest the executive officer of such powers, duties or functions,**

Notes.*Analogous Law :—*

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|---|---|
| S. 53, Bengal Municipal Act, XV of 1932. | Municipal Act, III of 1923. |
| S. 25, Behar and Orissa Municipal Act, 1922. | Ss. 16, & 17, Madras City Municipal Act, 1919. |
| Ss. 34 (i) (c), Bombay Municipal Boroughs Act, 1925. | S. 18, Madras District Municipal Act, V of 1920. |
| S. 186-M, Bombay District Municipal Act, III of 1901. | Ss. 27 (5), Schedule V—1, Rangoon City Municipal Act, 1922. |
| S. 68, Bombay City Municipal Act, III of 1888. | S. 62, U. P. Municipalities Act, 1916. |
| Ss. 12 (3) (4), Calcutta City | |

Notes.

It is proposed to amend this section by making the above section as sub section 2 of Section 7 and sub-section (1), printed in italics, is proposed to be added under the Punjab Municipal Executive Amendment Bill as published in the *Punjab Government Gazette* Notification No. 147, dated 6th February, 1934. The word committee appears to be a mistake for the words "executive officer" as S. 33 of the Municipal Act already empowers committees to delegate powers under S. 33 to these officers. Similarly, the words in italics are proposed to be added to the original sections colon and dash being replaced by a comma. Clause (b) is proposed to be amended by the addition of words in italics.

Delegation—Under Section 33 of the Municipal Act certain powers under specific sections can be delegated to the sub-committees and certain officers specified therein. In municipalities to which this Act is made applicable, Section 33 must be deemed to be omitted. This Act vests all these and other powers in the Executive Officer who is further empowered to delegate some of these powers to any other servant or officer.

Delegation in writing.—Oral delegation is not possible and will be illegal. See 20 Cal. 448, 1926 Bom. 77 and Notes under S. 33 of the Municipal Act.

Sub-clause (d).—This clause recognises the general principle that the delegation of any power is subject to an implied power of resumption at any time. By delegation Executive Officer does not vacate his power to act. He is still seized of powers over matters delegated to servants or officers. Orders passed by the executive officer with reference to matters delegated are valid without any special recall of delegation. Cf. *Huth v. Clarke* (1890), 25 Q. B. D. 391.

Valid delegation.—Where a statute expressly or by implication leaves the determination of certain matters to a particular officer or body created by it, the latter has no power to delegate his or its authority on matters within his

or its competence to a third person: 40 Mad. 125. And where any of these powers are delegated in pursuance of the statute empowering the executive officer or corporate body to delegate such powers, the provisions of the statute should be carefully observed or else the delegation would be void. 66 I. C. 428.

The powers of the executive officer must be strictly construed and what is not permitted to him should be taken as forbidden. Cf. 36 Mad. 113.

8. Notwithstanding anything contained in the Municipal Account Code, the Executive Officer shall be responsible for the preparation and submission to the committee of the annual estimate of income and expenditure, and, if it is in his opinion necessary or expedient to vary taxation or to raise loans, shall submit his proposals in regard thereto.

Preparation
of Budget.

Notes.

Analogous Law:—

S. 125, Bombay City Municipal Act, III of 1888.	S. 154, Madras City Municipal Act, 1919.
S. 93, Calcutta City Municipal Act, III of 1923.	S. 33 of Madras District Municipal Act, 1920.

Budget.—It is the name applied to an account of the ways and means by which the income and expenditure for a definite period are to be balanced. It is an instrument devised to give the direct representatives of the people control over administrative officers. All the municipal corporations are required to prepare and submit to local Government or Commissioners a budget containing detailed estimate of income and expenditure showing for ensuing year together with proposals as to the amount of taxes to be levied or loans to be raised for the purpose of meeting such expenditure. Recent policy has been to give the municipal corporations full powers to frame and adjust their budgets in any way they like subject to certain restrictions and they have to abide by the budget as finally approved or modified. Provisions are also made for the preparation and submission of supplementary budget and for altering the budget and no payment of any sum out of the municipal fund can be made or authorised unless the said payment is covered by an allotment under a grant in the budget and a sufficient balance of such grant is still available. (Aiyangar's 'Municipal Corporations' p. 224.)

In the Account Code specific provisions are made as regards the form of budget and date of submission. In municipalities to which the Executive Officer's Act applies it is now the duty of the executive officer to prepare and submit the budget to the committee. He is also empowered

to vary taxation or to raise loans. He is not the final authority for sanction; his proposals and suggestions have to be considered by the committee. Their acceptance, modification or rejection rests with the committee.

attendance
meetings.

9. (1) The Executive Officer shall have the right to attend all meetings of the committee except a meeting convened for the purpose of considering the question of his suspension or removal and of any sub-committee and to take part in discussions, but shall not have the right to move any resolution or to vote.

(2) He shall attend any meeting of the committee or of a sub-committee if required to do so by the President.

Notes.

Analogous Law:—

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| S. 68, Bengal Municipal Act, XV of 1932. | Act, III of 1923. |
| S. 36, Bombay Municipal Boroughs Act, 1925. | S. 33, Madras City Municipal Act, 1919. |
| S. 26-A, Bombay District Municipal Act, III of 1901. | S. 18-A of Madras District Municipal Act, 1920. |
| S. 36 (t), Bombay City Municipal Act, III of 1888. | S. 21, Rangoon City Municipal Act, 1922. |
| S. 52, Calcutta City Municipal | S. 64, U. P. Municipalities Act, 1916. |

Notes.

In view of the prevailing conflict between the members and the executive officer, the latter seldom exercises this right and only does so when the attendance is absolutely necessary.

In case he is required to attend by the President, he must arrange to attend. He has no right of voting, as he is not a member of the committee, though he can make a statement for the consideration of the committee.

Control by
Government

10. The local Government, the Commissioner and the Deputy Commissioner shall have in respect of the Executive Officer all the powers of control, inspection, requisition, suspension and all other powers whatsoever that are conferred upon them respectively in respect of the committee by Chapter XII of the Municipal Act.

Notes.

Chapter 12, Sections 231-237 of Municipal Act, empower local Government, Commissioners and Deputy Commissioners to exercise power of control over committees. Similar powers of control, inspection and suspension have been given by the Act over executive officers.

Power of
local Govern-
ment to make
rules.

11. The local Government may, after previous publication, make rules consistent with this Act and with the Municipal Act to carry out the purposes of this Act:

Provided that before making any rules under the provisions of this section, the local Government shall, in addition to observing the procedure laid down in Section 21 of the Punjab General Clauses Act, 1898, publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby, at least thirty days before a meeting of the Punjab Legislative Council. *The local Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Council next following the publication of the draft, in order to give any member of the Council an opportunity to introduce a motion for discussing the draft.*

Notes.

It is proposed to amend the proviso to this section by substituting the following words for the words printed in italics (*vide* Section 3 of the Amendment Bill published in *Punjab Government Gazette*, dated 16th February 1934 :—

“ The local Government in order to give members of the Council an opportunity for moving a motion for discussing the draft, shall defer final publications of the rules, until after the expiry of the date fixed for the consideration of a motion for such discussion: provided that notice of such motion has been given before the first meeting of the council held after the expiry of thirty days from the publication of the draft.”

SCHEDULE I.

[*Vide* CLAUSE (b) OF SECTION 4.]

Sections of the Punjab Municipal Act, 1911.

Sections 39, 63, 64, 65, 66, 67, 73, 74, 75, 76, 77, 80, 81, 82, sub-section (3) of Section 96, sub-section (1) of Section 97, Sections 99, 100, 101, 102, 105, 109, 115, 115-A, 116, 117, 118, 119, sub-sections (1) and (2) of Section 121, Sections 122, 124, 125, 126, 127, 128, 129, 130, 131, 134, 135, sub-section (1) of Section 140, Sections 142, 143, clauses (b) and (c) of Section 145, Sections 149, 154, 156, 166, clause (c) of Section 169, Sections 170, 170-A, sub-section (2) of Section 172, Sections 173, 176, 177, 182, sub-sections (1), (2) and (4) of Section 189, Sections 191, 195-A, 197-A, 220 and sub-section (3) of Section 223.

SCHEDULE II.

[*Vide* CLAUSE (c) OF SECTION 4.]

The Punjab Municipal Act, 1911, shall be deemed to be amended as follows, namely:—

1. Sections 33, 46 and 47 shall be deemed to be omitted.
2. In Section 3 the following new clause shall be deemed to be inserted after clause (5), namely:

“(5a) ‘Executive Officer’ means an Executive Officer appointed under the provisions of the Punjab Municipal (Executive Officer) Act, 1931.”

3. For Section 35 the following section shall be deemed to be substituted, namely:—

“35. (1) On the occurrence or the threatened occurrence of any sudden accident or unforeseen event involving or likely to involve extensive damage to any property of the committee or damage to human life the President or the Executive Officer or in the absence of the President or Executive Officer or during the vacancy of his office a Vice-President may direct the execution of any work or the doing of any act which the committee is empowered to execute or do as the emergency shall in his opinion justify or require:

“Provided that every such action taken under this section shall be reported to the next following meeting of the committee.

“(2) The President or the Executive Officer or in the absence of the President or during the vacancy of his office a Vice-President or Executive Officer shall not act under this section in contravention of any order of the committee.

“(3) The President or the Executive Officer or in the absence of the President or during the vacancy of his office a Vice-President may prohibit, until the matter has been considered by the committee, the doing of any act which is in his opinion undesirable in the public interest:

“Provided that the act is one which the committee has power to prohibit.

“(4) No direction given under this section shall be questioned in any court on the ground that the case was not one of emergency.”

Notes.

It is proposed to amend Section 35, and the amended Section will read as follows:—

35. (1) On the occurrence or threatened occurrence of any sudden accident or event involving or likely to involve extensive

damage to property or danger to human life or grave inconvenience to the public, the president or the Executive Officer, or in the absence of the president or during the vacancy of his office, a vice-president may, if in his opinion there is an emergency necessitating action before the matter can be considered by the committee, direct the execution of any such work or the doing of any such act which the committee is empowered to execute or do, as the emergency shall in his opinion justify or require, and may direct that the expense of executing such work or doing such act be paid from the municipal fund :

Provided that every such action taken under this section shall be reported to the committee at its next meeting.

(2) The president or vice-president or Executive Officer shall not act under this section in contravention of any order of the committee.

(3) The president or the Executive Officer or in the absence of the president or during the vacancy of his office, a vice-president may prohibit, until the matter has been considered by the committee, the doing of any act which is in his opinion undesirable in the public interest : provided that the act is one which the committee has power to prohibit.

(4) No direction given in this section shall be questioned in any Court on the ground that the case was not one of emergency.

4. In section 41 the following further proviso shall be deemed to be added at the end, namely:—

“ Provided further that the power conferred by this section shall not be exercised in respect of an Executive Officer appointed under the provisions of the Punjab Municipal (Executive Officer) Act, 1931.”

Notes.—In the Amendment Bill this item is proposed to be omitted.

5. In sub-section (1) of Section 66 the words “ Executive Officer ” shall be deemed to be substituted for the words “ signatures of not less than two members of the committee.”

6 After sub section (5) of Section 72 the following new sub-section shall be deemed to be added:—

“(6) The enquiry necessary for a decision whether any relief shall be granted under this section shall be held by the Executive Officer who shall make such recommendation to the committee as he may deem proper :

“ Provided that the committee shall not grant any remission of tax unless such remission is recommended by the Executive Officer.”

7. In sub-section (2) of Section 77 the words "the Executive Officer" shall be deemed to be substituted for the words "a member of the committee or the Secretary."

8. In sub-section (2) of Section 81 the words "Executive Officer" shall be deemed to be substituted for the words "President and Vice-President or the Secretary."

9. In the proviso to Section 82 the words "Executive Officer" shall be deemed to be substituted for the words "President or Vice-President."

10. In Section 113 for the words "by notice" the words "order the Executive Officer by notice to" shall be deemed to be substituted and for the words "it to be necessary in order to prevent imminent danger, it shall forthwith take such steps to avert the danger as may be necessary" the following words shall be deemed to be substituted, namely:—

"the Executive Officer that the danger to such persons from any such building, well, tank, reservoir, pool, depression or excavation is imminent, he shall forthwith take such steps to avert such danger as may appear to him to be necessary and as may be approved by the President:

"Provided that any action taken by the Executive Officer under this section shall be reported to the committee at the next following meeting."

11. In Section 114 for the words "by notice" the words "order the Executive Officer by notice to" shall be deemed to be substituted and for the words "be necessary in order to prevent imminent danger the committee shall forthwith take such steps, at the expense of the owner, to avert the danger as may be necessary" the following words shall be deemed to be substituted, namely:—

"the Executive Officer that the danger from any such building, wall, structure, thing, bank or tree is imminent he shall forthwith take such steps, at the expense of the owner, to avert the danger as may appear to him to be necessary and as may be approved by the President:

"Provided that any action taken by the Executive Officer under this section shall be reported to the committee at its next following meeting."

12. In sub-sections (1), (2) and (4) of Section 139 for the word "committee" the words "Executive Officer" shall be deemed to be substituted, and the following words and figures shall be deemed to be added at the end of sub-section (1), namely:—

" Provided that the Executive Officer shall not, without the approval of the committee, sanction the erection or re-erection of any building which involves any projection or encroachment over or upon any land vested in the committee or any land, the property of Government, which has been transferred to the committee for management:

" Provided further that if the Executive Officer refuses to sanction the erection or re-erection by any person of any building except on the ground that such erection or re-erection would be in contravention of any bye-law or of any general scheme sanctioned by the Commissioner restricting the erection or re-erection of buildings or any class of buildings, such person may, within fifteen days from the date of the service of the Executive Officer's order refusing to sanction such erection or re-erection, appeal to the committee, and the committee's decision shall, subject to the provisions of Sections 22, 232 and 236, be final."

13. (a) In Section 193 the words " or Executive Officer, as the case may be " shall be inserted in the following places:—

- (1) between the words " the committee " and the words " may refuse ",
- (2) between the words " the committee " and the words " as granted ",
- (3) in the proviso between the words " the committee " and the words " in any case ",
- (4) in the explanation between the words " the committee " and the words " may refuse ",
- (5) at the end of the explanation between the words " the committee " and the word " may also refuse ".

(b) The words " or he, as the case may be " shall be inserted in the following places:—

- (1) between the words " as it " and the words " may deem",
- (2) in the proviso between the words " it " and " shall be deemed",
- (3) in explanation (1) between the words " it " and " may deem".

Notes.

It is proposed to substitute the following for the above item No. 13.

For item 13 in Schedule II of the said Act the following shall be substituted, namely :—

“ 13 (a) In Section 193 the words ‘ or the Executive Officer, as the case may be ’ shall be inserted in the following places, namely :—

- (i) in sub-section (1) between the words ‘ the committee ’ and the word ‘ shall ’ ;
- (ii) in sub-section (2) between the words ‘ the committee ’ where they first occur and the words ‘ may refuse ’ ;
- (iii) in sub-section (3) between the word ‘ committee ’ and the word ‘ may ’, where it first occurs ;
- (iv) in sub-section (4) between the words ‘ the committee ’ where they first occur and the words ‘ neglects or omits ’ ;
- (b) In the same section the words ‘ or he, as the case may be, ’ shall be inserted in the following places, namely :—

- (i) in sub-section (2) between the word ‘ it ’ where it first occurs and the word ‘ deems ’ ;
- (ii) in sub-section (3) between the word ‘ it ’ and the word ‘ may ’ where it last occurs.

14. In Section 194 after the word “ committee ” the words “ or by the Executive Officer ” shall be deemed to be inserted.

Notes.—It is proposed to substitute the following item for the above item :—

For item 14 in Schedule II of the said Act, the following shall be substituted, namely :—

“ In Section 194 the words ‘ or the Executive Officer, as the case be ’ shall be inserted after the word ‘ committee ’ wherever it occurs.”

15. In Section 195 for the word “ committee ” wherever it occurs, except in the last proviso, the words “ Executive Officer ” shall be deemed to be substituted, and the following proviso shall be deemed to be added at the end, namely :—

“ Provided further that if any notice is issued by the Executive Officer under this section on the ground that a building has been begun or has been erected in contravention of the terms of any sanction granted or in contravention of any bye-law made under Section 190 the person to whom the notice is issued may, within fifteen days from the date of service of such notice, appeal to the committee, and, subject to the provisions of Sections 225, 232 and 236, the decision of the committee shall be final.”

Notes.—It is proposed to amend the above item as follows :

In item 15 in Schedule II of the said Act, for the words “ last proviso ” the words “ first proviso ” shall be substituted.

Note.—Under General Clauses Act this amendment has already been incorporated in the Municipal Act as amended by this Act.

The word “it” also requires to be substituted by the word “him.”

16. In the following sub-sections and sections the words “or Executive Officer” shall be deemed to be inserted after the words “the committee” :—

(a) sub-section (1) of Section 203, sub-section (1) of Section 204, Section 205, Section 206, sub-section (1) of Section 207, Section 208, sub-section (1) of Section 210, sub-section (1) of Section 211, Section 212.

(b) In Section 208 as amended between the words “it” and “in” the words “or him” shall be deemed to be inserted.

Notes. The similar amendment of Section 207 seems to be necessary.

17. For sub-section (1) of Section 215 the following sub-section shall be deemed to be substituted :—

“215. (1) Every notice issued under this Act or under any rule or bye-law, by a committee or by its Executive Officer or by the person authorised by the committee or by the Executive Officer, shall be in writing signed by the Executive Officer or by any person authorized in this behalf, and every such notice and every order made under Section 193 may be served on the person to whom it is addressed or delivered or left at his usual place of abode or business with some adult male member or servant of his family or if it cannot be so served may be affixed to some conspicuous part of his place of abode or business.

The proviso to the sub-section shall be deemed to be omitted.

18. (1) In clause (b) of sub-section (1) of Section 225 between the word “or” and the word “under” the words “by a notice from the Executive Officer” shall be deemed to be inserted.

(2) In clause (c) of sub-section (1) of Section 225 between the word “committee” and the word “under” the words “or an Executive Officer” shall be deemed to be inserted, and for the word “it” shall be deemed to be substituted the word “them”.

19. (1) In Section 228 between the words “committee” and “or some person” the words “or its Executive Officer” shall be deemed to be inserted; and between the words “com-

mittee " and " in this behalf " the words " or by the Executive Officer " shall be deemed to be inserted.

(2) In the Explanation of Section 228 at the commencement between the words " committee " and " may authorize " the words " or its Executive Officer " shall be deemed to be inserted.

20. In sub-section (1) of Section 229 between the words " Vice-President " and " Medical Officer of Health " the words " Executive Officer " shall be deemed to be inserted.

The amendments in paras. 1 to 20 have been incorporated in the Municipal Act; some of the proposed amendments have also been incorporated under General Clauses Act.

Draft Rules.—Proposed under Section 11 of the Executive Officer Act, *vide* P. G. Notification No. 3360, dated the 30th January 1934.

1. The Executive Officer is the principal Executive Officer of the Municipal Committee and all other servants of the Committee are subordinate to him.

2. The Executive Officer shall be responsible for the general control of the Municipal Office. In particular, he shall see that adequate measures are taken against the loss or mislaying of, or tampering with, office files, shall issue orders for this purpose, and shall see that the servants of the Committee comply with those orders. He shall see that all files are paged and indexed and that no file is taken from the Record Room without a receipt being given for it and placed on a register maintained for the purpose.

3. The Executive Officer shall not order the transfer of municipal employees without the orders of the Municipal Committee, unless the employee is transferred within the same department and is drawing a salary of not more than one hundred rupees.

4. (a) When the Executive Officer takes action under rule 3 of the rules regulating the dismissal of employees, published with Punjab Government Notification No. 4421, of February the 17th, 1925, he shall himself conduct the inquiry if he has power to dismiss the employee. He shall report for the information of the Municipal Committee all orders of dismissal passed by himself.

(b) When the Municipal Committee takes action under the rules aforesaid against an employee whom the Executive Officer has not the power to dismiss, the Committee shall have the inquiry under rule 3 conducted by the Executive

Officer unless the Committee by a *Résolution* decides that the inquiry should be held by some person or persons other than the Executive Officer.

5. All communications addressed on behalf of the Municipal Committee to the local Government or to the Officers of the local Government shall be signed by the Executive Officer. He shall be responsible for seeing that communications addressed through him to the Committee by the local Government or the officers of the local Government are dealt with promptly and efficiently, that the intentions of the Committee in regard to matters requiring a reference to Government are correctly conveyed, and that all important Correspondence between Government and the Committee is laid before the President and the Committee for information or action as the circumstances may require.

6. The Executive Officer in discharge of his responsibility for preparing and submitting to the Committee the annual estimates of income and expenditure, shall submit his proposals to the Committee on or before the 7th January each year and at the same time shall send a copy direct to the Deputy Commissioner. He shall inform the Deputy Commissioner of the final proposals of the Committee: provided that if the Committee has not framed final proposals on or before the 25th of February, he shall at once inform the Deputy Commissioner accordingly, and at the same time shall communicate to him any modifications which the Finance Sub-Committee may have proposed and any modifications which he may himself have proposed to the Committee.

7. The Executive Officer shall be responsible for carrying out, either himself or under his orders, all auctions for the disposal, either by sale or lease or otherwise, of municipal property.

Act No. II of 1922*
THE PUNJAB SMALL TOWNS ACT, 1922.
As amended by Act IV of 1925, Act XIV of 1926
& Act IV of 1929.

PASSED BY THE LEGISLATIVE COUNCIL OF THE GOVERNOR
OF THE PUNJAB.

*[Received the assent of the Governor of the Punjab on the 5th
December 1921 and that of the Governor-General on the
25th January 1922, and published in Part I of the
Punjab Gazette dated the 17th March 1922.]*

*An Act to make better provision for the Administration
of the Small Towns in the Punjab.*

CHAPTER I.

PRELIMINARY.

WHEREAS it is expedient to make better provision for the administration of Small Towns in the Punjab and WHEREAS the previous sanction of the Governor-General has been obtained under Section 85-A (3) of the Government of India Act, IT IS HEREBY ENACTED as follows:—

1. (1) This Act may be called the Punjab Small Towns Act, 1922.

Short title,
extent and
commence-
ment

(2) It extends to the Punjab, and it shall come into force on such date as may be notified in this behalf by the local Government in the *Punjab Gazette*.

Note.—The Act came into force on 7th May 1923, *Vide* Punjab Notification No. 15144, dated the 7th May 1923.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context—

(a) “annual value” means the gross annual rent at which any house or land may reasonably be expected to let from year to year;

(b) “house” includes any shop, warehouse, factory, office or business premises;

(c) “building” includes any house, portion of a house, and a wall, well, which is not used for agricultural purposes, tank or reservoir;

(d) “erection or re-erection of buildings” includes any alteration of or addition to any building except ordinary repairs.

(e) “a small town” means any local area shown in the returns of the last official census to contain fewer than ten thousand inhabitants which the local Government may declare to be a small town for the purposes of this Act.

* As altered by Legislative Department Notification No. 6, dated 13th May 1922.

¹(f) ["Deputy Commissioner" includes any officer or officers at any time specially appointed by local Government to perform in any local area the functions of a Deputy Commissioner under this Act.]

Notes.—Annual value.—Cf. Section 3 (1) of the Municipal Act. For the purposes of this Act the definition is very simple. For notes *see* S. 3 (1) of the Municipal Act, pp. 10-20. So far as deductions for repairs are concerned no provision is made. Taxes paid by a tenant will be calculated as part of the rent. Proviso as regards machinery will also be inapplicable.

Include.—*See* notes on meaning of the word "include" on p. 38 of the Municipal Act.

Clause (d).—The definition is not restrictive. *See* Notes on Section 3 (5) of the Municipal Act, pp. 37-43.

Building.—*See* Notes under Section 3 (2) of the Municipal Act, pp. 20-2.

The definition is not restrictive and the word will have its ordinary dictionary meaning and will include structures specifically included. The definition in the Municipal Act is very wide and covers structures, *c. g.*, thatch or wooden shed while the definition in this Act will not cover such structures.

CHAPTER II.

CONSTITUTION OF SMALL TOWNS AND TOWN COMMITTEES, AND THE APPOINTMENT OF SERVANTS.

3. (1) The local Government may by notification in the *Punjab Gazette* and by proclamation in the area concerned—

Procedure for
constituting
small town.

- (a) propose to declare any town, village, suburb, bazar or inhabited place or any area included in a colony as defined in Section 3 of the Colonization of Government Lands (Punjab) Act, 1912, to be a "small town" for the purposes of this Act, and may for the purpose of the proposed declaration unite the whole or any portion of any town, village, suburb, bazar or inhabited place with the whole or any portion of any other town, village, suburb, bazar or inhabited place;
- (b) define the limits of any small town for the like purposes: provided that a town already having a Municipality shall not be declared a small town within the meaning of this Act.

¹ Added by Section 2 of Punjab Small Town Amendment Act, XIV of 1926.

(2) Should any inhabitant desire to object to a notification issued under sub-section (1) he may, within three months from the date of its publication, submit his objection in writing, through the Deputy Commissioner, to the local Government and the local Government shall take his objection into consideration.

(3) When three months from the date of the publication have expired, and the local Government has considered and passed orders on such objections as may have been submitted to it the local Government may, by notification, declare the local area to be, for the purposes of this Act, a "small town."

¹" [(3-a) When a local area, the whole or part of which was a notified area under the Punjab Municipal Act, 1911, is declared to be a small town under this section, the Small Town Committee shall be deemed to be the perpetual successor of such Notified Area Committee in respect of all its rules, bye-laws, taxes and all other matters whatsoever to the extent to which they are lawful for a small town under this or any other Act."]

(4) The local Government may by notification, direct that all or any of the rules made under this Act which are in force in any "small town" in the Punjab shall, with such exceptions and adaptations as may be considered necessary, apply to the local area constituted a "small town" under this section, and such rules shall forthwith apply to such "small town" without further publication.

²[(5) The local Government may at any time cancel or modify any notification issued under this section.]

Notes.—*Cf.* Section 4 of the Municipal Act, 1911 as amended and *see* notes thereon.

Clause (3-a) was added by Section 2 of amendment of 1925 and by Section 12 this is given a retrospective effect with the result that the amendment must be taken to be a part of the original Act which came into force on 7th May 1923.

4. (1) There shall be established for each small town a committee, to be known as the Town Committee, consisting of such number of members not less than five as the local Government may fix.

¹Added by Section 2 of Punjab Small Town Amendment Act, 1925.

²Added by Section 3 of Punjab Municipal & Small Town Amendment Act, 1929.

(2) Every such committee shall consist of members elected from the inhabitants of the town in accordance with rules made by the local Government under this Act, and of members appointed by the Commissioner by name or by office:

Provided that the appointed members shall not exceed one-fourth of the whole.

¹ “[Provided further that if any seat on a Small Town Committee is required to be filled by election and a member is for any reason not elected for it, the Commissioner may fill that seat by appointment.”]

(3) The appointment and election of members shall be notified by the Commissioner in the *Punjab Gazette*.

² [(4) When a local area the whole or part of which was a notified area under Punjab Municipal Act, 1911, is declared to be a small town under Section 3, the notified area committee shall continue in office, and shall, notwithstanding anything contained in this Act, be deemed to be the Small Town Committee, until the appointment and election of members is notified by the Commissioner in the Gazette under sub-section (3)]

(5) The local Government may at any time cancel or modify any notification issued under this section.

(6) The Commissioner may at any time cancel or modify any notification issued under sub-section (3).]

Notes.—*Cf.* Sections 11, 12 of the Municipal Act.

³ “[4-A. Notwithstanding anything contained in the Indian Oaths Act, 1873, every person who is elected or appointed to be a member of a Small Town Committee shall before taking his seat take or make, at a meeting of the said committee, an oath of affirmation of his allegiance to the Crown, in the following manner, namely:—

“ ‘1, A B, having been elected appointed a member of this committee do solemnly swear (or affirm) allegiance to His Majesty the King-Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.’

¹ Added by Section 3 of Punjab Small Town Amendment Act, 1925.

² Added by Section 3 of Punjab Municipal & Small Town Amendment Act, 1929.

³ Added by Section 4 of the Punjab Small Town Amendment Act, 1925.

“ Provided that —

- “ (i) if any such person omits or refuses to take or make such oath or affirmation, his election or appointment, as the case may be, shall be deemed to be invalid;
- (ii) in the case of such invalid election the person, if any, who obtained the next largest number of votes from amongst those who failed to secure election shall be deemed to have been duly elected, or if the election was uncontested a fresh election shall be held, or in the case of such invalid appointment the Commissioner shall appoint another person in the manner prescribed in sub-section (2) of Section 4, and in such case the proviso to sub-section (2) of Section 4 shall not apply;
- “ (iii) no person whose election or appointment has been deemed to be invalid under this section shall be eligible for election or appointment to any Small Town Committee for a period of two years from the date on which he ought to have taken or made such oath or affirmation.”]

Notes.—Cf. Section 24 of the Municipal Act and notes thereon at p. 111.

The method of taking oath is prescribed in General Election Rules, *vide* Rule 34-A.

Failure to take oath—*see* Notes on p. 173.

5. Every committee shall be a body corporate by the name of the Town Committee of the small town and shall have perpetual succession and a common seal, with power to acquire property, both movable and immovable, and, subject to the provisions of this Act or of any rules made thereunder, to transfer any property held by it, to contract and to do all other things necessary for the purpose of its constitution: and may sue and be sued in its corporate name.

Notes.—This corresponds to Section 18 of the Municipal Act. This section makes the town committees bodies corporate. For full discussion of the subject *see* Notes under Section 18 of the Municipal Act, pp. 87—105.

(1) If a member of a committee is appointed by office, the person for the time being holding the office shall be a member of the committee until the Commissioner shall otherwise direct,

(2) The term of office of all other members shall be three years:

[Provided that on completion of the term an outgoing member shall, unless the local Government otherwise directs, continue in office until the election or appointment of this successor is notified.]

(3) An outgoing member shall, if otherwise qualified, be again eligible for appointment or election.

Notes.—This section corresponds to Section 13 of the Municipal Act. See notes on pp. 78-9.

*[6-A. (1) Any member of committee who may wish to resign may forward his written resignation through the president of the committee to the Deputy Commissioner within whose jurisdiction the Small Town lies.

Resignation
of members.

(2) When the acceptance of the resignation by the Commissioner has been communicated to the committee, the member shall be deemed to have vacated his seat.]

Notes.—Cf. Section 15 of the Punjab Municipal Act.—See Notes on p. 81. There is no power given for withdrawal.

7. The local Government may remove any member of a committee who is in its opinion unfit to act or persistently remiss in the discharge of his duties as a member ²[and any person so removed shall not be eligible for election or appointment as a member of a committee for a period of five years from the date of his removal.

Removal of
members.

Notes.—Cf. Section 16 of the Municipal Act. Though the section does not give details of all the causes which may lead to the removal of any member, the words are wide enough to empower local Government to remove members for causes enumerated under Section 16 of the Municipal Act. No opportunity for explanation is afforded to the member before his removal. For Notes see Section 16 of the Municipal Act.

8. Upon the death, resignation or removal of any member his place shall be filled by appointment or by election according as such member was an appointed or elected member. The term of office of a member so appointed or elected shall be the unexpired portion of the term of office of the member in whose place he has been appointed or elected.

Procedure
for filling
casual vacan-
cies

¹ Added by Section 3 of the Punjab Small Town Amendment Act, 1926.

² Added by Section 4 of the Punjab Small Town Amendment Act, 1926.

³ Added by Section 5 of the Punjab Small Town Amendment Act, 1925.

Notes.— See Section 17 of the Municipal Act and notes thereunder. The Government has not retained such wide powers, as it possesses under Section 17 of the Municipal Act. Want of such wide powers may prove embarrassing in certain cases.

Election or
appointment
of President
and Vice-
President

9. (1) The committee shall elect one of its own members to be President subject to the approval of the Commissioner:

Provided that in case of the Commissioner's refusal to accord approval, the matter shall be referred to the local Government for decision.

(2) A committee may also elect one of its members to be Vice-President.

(3) The term of office as President or Vice-President of every member nominated or elected as such shall be the remainder of such member's term of office as a member.

Notes.—The above section corresponds to Sections 20 and 21 of the Municipal Act. Provisions of those sections, however, differ materially from the provisions of this section. In all cases it is the committee alone who is required to elect its president. In case the election is not approved by Government the committee shall have to elect another member.

Conduct of
business.

10. Every committee shall meet at least once a month for the transaction of business. The President or in his absence the Vice-President shall preside as Chairman at all meetings, and if there be no President or Vice-President then such one of their number as the members present may elect shall preside as Chairman. The Chairman of the meeting shall have a casting vote in the event of the votes of the members present being equally divided on any question which may come before the meeting.

Notes.—This section corresponds to Sections 25 (1), 28 and 29 of the Punjab Municipal Act. There is no specific provision for decision by majority of votes. Such matters will be governed by rules to be made by local Government under Section 51 or by Common Law.

For notes under this section see notes under Sections 25, 28 and 29 of the Punjab Municipal Act.

Employ-
ment of
officers and
servants and
powers of
the Deputy
Commissioner
to require
dismissal.

11. A committee shall employ such officers and servants at such remuneration, if any, as may be necessary for the efficient execution of its duties:

Provided that—

(1) if in the opinion of the Deputy Commissioner, for reasons to be stated in writing, any officer or servant employ-

ed by the committee is unfit for his employment the committee shall on the requirement of the Deputy Commissioner dismiss him;

(2) if in the opinion of the Deputy Commissioner, for reasons to be stated in writing, the number of persons employed by a committee or, the remuneration assigned by the committee to those persons is excessive the committee shall on the requirement of the Deputy Commissioner reduce the number of those persons or the remuneration, as the case may be.

Notes.—First clause corresponds to Sections 38 & 39 of the Municipal Act while the proviso corresponds to Sections 41 and 42 of the said Act. For Notes *see* comments under Ss. 38 and 39 and Ss. 41 and 42.

12. (1) Any sweeper employed by a committee who, in absence of a written contract authorising him to do so and without reasonable cause, absents himself from his duties or resigns his employment without giving one month's notice to the committee, or who neglects or refuses to perform his duties or any of them, shall be liable to fine which may extend to twenty rupees or to imprisonment which may extend to two months.

Penalties
for certain
classes of
servants.

(2) The local Government may by notification direct that on and from a date to be specified in the notification the provisions of sub-section (1) with respect to sweepers shall apply also to any specified class of servants employed by a committee whose functions intimately concern the public health or safety.

Notes.—*Cf.* Section 45 of the Municipal Act. *See* Notes on pp. 190-2.

13. A committee may, subject to such conditions as the local Government may prescribe, establish a provident fund and compel all its officers and servants in receipt of a salary of not less than twenty rupees a month to contribute thereto.

Establish-
ment of pro-
vident fund.

Notes.—*Cf.* Section 43 (2) (c).

14. (1) A committee may grant to its officers and servants leave, absentee and acting allowances and gratuities on retirement subject to any rules which the local Government may make in this behalf.

Powers of
committees
as to the
conditions of
service of
officers and
servants.

(2) Subject to any rules which the local Government may make in this behalf, a committee may suspend or dismiss any of its officers or servants.

Notes.— Clause (1) corresponds to Section 43 (2) of the Municipal Act; clause (2) corresponds partly to Section 39.

For Notes *see* pp. 181-5 and 189.

Delegation—*See* Section 42 which empowers town committees to delegate their powers under this section to Presidents and Vice-Presidents.

CHAPTER III.

THE TOWN FUND AND PROPERTY

Constitution
of the town
fund.

15. There shall be formed for each small town a town fund, and there shall be placed to the credit thereof—

- (a) all sums received by or on behalf of the committee under this Act or otherwise;
- (b) all fines realised in cases in which prosecutions for offences committed within the limits of the small town are instituted under this Act, or the rules thereunder, or under Section 34 of the Police Act, 1861, or under the Prevention of Cruelty to Animals Act, 1890, or under any other Act or rules made under it in which provision is made for the credit of such fines to a town fund;
- (c) where the small town has been established instead of a notified area, the balance, if any, standing to the credit of the fund of notified area.
[* * *]

Notes.—*Cf.* Section 51 of the Municipal Act and notes thereunder. Notified areas constituted under the Punjab Municipal Act are being converted into small towns and under clause (c) funds of the notified areas will vest in the small towns substituted in their places.

Under devolution rules these fines cannot now be credited to Municipal Fund.

Application
of the town
fund.

16. Subject to any rules which the local Government may make in this behalf, the town fund shall be under the control of the committee, and may be applied to—

- (a) the re-payment of the principal and interest of any sum advanced as a loan by the local Government to the committee for the purposes of the Act;

¹ The words "as the case may be" were omitted by Section 6 of the Punjab Small Town Amendment Act, 1925.

- (b) the payment of the salary, allowances and gratuities on retirement of the establishment entertained by the committee under this Act and of any contributions to a provident fund established under Section 13 which the rules regulating such provident fund may require;
- (c) the payment of expenses incurred in the maintenance of public roads within the limits of the small town, not being roads of which the maintenance is undertaken by the Government or by the District Board;
- (d) the payment of expenses incurred in the maintenance of buildings the property of or vested in the committee;
- (e) the payment of expenses incurred in providing for the supply, storage and preservation from pollution of water for the use of men or animals;
- (f) the payment of the expenses incurred in carrying out the sanitation, drainage, lighting and generally in the improvement of the small town or in promoting the education, safety, health, welfare or convenience of the inhabitants of the small town;
- (g) the payment of any other charges which the local Government may declare to be charges to the payment of which the town fund may or shall be applied.

Notes.—The section to a certain extent is based on Section 52 of the Punjab Municipal Act. The objects, on which the Town Funds can be spent, are necessarily limited. Clause (f) is very general in its terms and many public purposes, not specifically mentioned, can be covered by this clause while under clause (g) many other objects can be indicated by Government in which the fund may or shall be spent.

For Notes *see* commentary under Section 52 of the Punjab Municipal Act.

Cost of maintenance of lunatics.—The detention of lunatics in a Mental Hospital and the cost of their maintenance is covered by the objects mentioned in Section 16.

The Small Town Committee is entitled to spend the funds on the cost of maintenance of lunatics, but it is not bound to do so. Hence the committee is not liable to pay the costs of maintenance of lunatics already incurred.

Section 35 merely regulates the powers of the committee for issuing orders for sanitary or other purposes and does not in any way affect the scope of the power of the committee under Section 16.

The words "District funds" in rule 185 of the rules framed by the Punjab Government under Lunacy Act, Section 91 (2) do not include the funds of the Small Town Committee. 1934 Lah. 148.

study of
town

17. (1) In places where there is a Government Treasury or sub-treasury the town fund shall be kept in such treasury or sub-treasury.

(2) In places where there is no such treasury or sub-treasury, the town fund may be ¹[kept in a Government treasury or sub-treasury at any other place in the District or] deposited with any banker or person acting as a banker who has given such security for the safe custody and repayment on demand of the fund as the Commissioner may in each case consider fit, or such other arrangement may be made for its safe custody as the local Government may in each case approve.

Notes.—Cf. S. 54 of the Municipal Act. The amendment has retrospective effect. See Section 10 of Act XIV of 1926. The amendment must be deemed to have come into force on 7th May 1923.

statement
of town

18. The committee may invest or may deposit in a Bank any portion of the town fund in any manner which the local Government may approve.

Notes.—Cf. Section 55 of the Municipal Act.

property
in the
committee.

19. Subject to any special reservations made or to any special conditions imposed by the local Government, the following property shall vest in and be under the control of the committee, that is to say—

- (a) all land or other property transferred to the committee by the Secretary of State for India in Council for local public purposes, and all public streets ²[not being streets or roads in the charge of Public Works Department];
- (b) where the small town has been established instead of a notified area, all property ³[not being streets or roads in the charge of the Public Works Department] previously vested in the notified area, or

¹ Added by Section 5 of the Small Towns Amendment Act, 1926.

² Added by Section 6 of the Small Towns Amendment Act, 1926.

such portion thereof as the local Government may direct;

- (c) all dust, dirt, dung, ashes, refuse, animal matter or filth or rubbish of any kind, or dead bodies of animals, collected by the committee from the streets, houses, privies, sewers, cesspools or elsewhere.

Notes.—Cf. Section 56 of the Punjab Municipal Act. It will be noticed that the properties vested in the town committees are very limited.

For Notes see Section 56 of the Punjab Municipal Act.

20. Where any immovable property is transferred otherwise than by sale by the local Government to a committee for public purposes, it shall be deemed to be a condition of the transfer unless specially provided to the contrary, that, should the property be at any time resumed by the Government, the compensation payable therefor shall, notwithstanding anything to the contrary in the Land Acquisition Act, 1894, in no case exceed the amount, if any, paid to the Government for the transfer, together with the cost or the present value, whichever shall be less, of any buildings erected or other works executed on the land by the committee.

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Notes.—This reproduces clause (2) of Section 56 of the Municipal Act.

CHAPTER IV.

TAXATION.

21. Subject to any rules which the local Government may make in this behalf, and in accordance with the other provisions of this Act, the committee may impose any one or more of the following taxes:—

Taxes w
may be
posed

(a) A town-rate in the form of a tax—

- (i) upon all owners or occupiers of houses or lands within the limits of the small town assessed according to the annual value of such houses or lands: provided that if any land is assessed to the local [rate] under the Punjab District Boards Act, 1883, the amount of the rate so assessed shall be deducted from the tax assessed on such land under this section;

¹ Substituted for the word "rates" by Section 7 of Punjab Small Town Amendment Act, 1925.

- (ii) upon all residents of the small town assessed according to their circumstances: provided that the amount assessed on any one person according to his circumstances shall not exceed Rs. 7-8 per month in any one small town.

Explanation—

- (a) A person whether he be a Government servant or not shall be considered to be a resident of a small town if he resides or carries on business or works for gain or practises any profession or art within the limits of the small town: provided that no woman, or child under the age of 21 years not being the owner of a house or land within the limits of a small town, shall for the purpose of this section be deemed to be the resident of a small town.
- (b) A tax upon persons including Government servants who practise any specified profession or art or carry on any specified business, trade or calling in the small town.
- (c) A tax payable by the owner on all or any vehicles, animals used for riding, draught or burden or dogs when such vehicles or animals or dogs are kept within the limits of the small town: provided that no tax shall be payable on vehicles or animals used mainly for agricultural purposes.

Notes.—See Section 61 of the Punjab Municipal Act as amended by Act II of 1923 and III of 1933. Subject to any rules made by local Government the small town committee is authorized to impose any one or more of the three taxes enumerated in the section, without any previous sanction of the local Government unless such sanction is required by rules made by local Government. No restriction as regards cash balances or the proportion of elected members of the town committee is laid down unless like Section 61 of the Punjab Municipal Act such restrictions are imposed by rules to be made by local Government.

See Rules made by local Government on pp. 292-5.

Town rate.—This is imposed on either owners or occupiers of houses or lands situate within town limits according to the annual value of the houses or lands or (2) on all residents according to their circumstances. It would appear that residents who are also owners or occupiers of lands or houses may be subject to double town rate both under clauses (i) and (ii).

Residence.—In every case residence is a question of fact and it must depend upon the particular circumstances in each case. The general practice is to accept as the person's residence the place where throughout the year you would ordinarily expect him to be found. The term residence is naturally a flexible one, but in the case of traders carrying on business it is manifestly their place where they earn a living and do their daily work nor does that place cease to be their residence merely because for purposes of rest or recreation or family ties, they occasionally return to the family home where they and their families have been brought up. 1924 All. 669.

Town rate under S. 21 (a) (i)—This is known as Haisiat Tax.

Circumstances.—The words used in the Bengal Municipal Act, Section 85, are "circumstances and property" but in view of the fact that a townsman may be rated on his immovable property under clause (i) the word property is not used along with circumstances. This will, however, not make any difference. In 41 Cal. 168 it was held that "circumstances" is equivalent to "means" and the circumstances outside the town limits cannot be considered and it will be on the town committee to prove the value of the "circumstances". 27 Cal. 849; 39 Cal. 141.

The following rulings on Section 85 of the Bengal Act, 1884, which corresponds partly with the provisions of this Act may be usefully consulted and taken as guides for interpretation of this section:—

The word "circumstances" in Section 85, clause (1) of the Act, includes income earned by resident tax-payers from outside the limits of the municipality; such income brought from outside to be spent and enjoyed within the municipality is part of the "circumstances" of the resident tax-payer, and is liable to assessment under Section 85. 27 Cal. 849; *dist.* in 25 C. W. N. 47.

In an action for recovery of tax it is open to the assessee to urge in defence that the assessment is not in conformity with statutory provisions and *ultra vires*; the question can be opened by a civil court. The decision of the Commissioner under Section 111 of the Bengal Act, 1884 is final only, when the assessment is made in accordance with Section 85. An assessment of tax under Section 85 (a) with reference to property and income of an assessee outside the municipality is *ultra vires*. 23 C. W. N. 475; 50 I. C. 394.

The word "circumstance" in Section 85 of the Act is equivalent to "means" so that the taxation should be according to the means and property of the rate-payer within the

municipality. It was *held* that the circumstances and property meant the whole amount earned by the assessee and not what he spent: 35 Cal. 859. The assessment of the value of the circumstances and property of the rate-payer for the purpose of Section 85 of the Act cannot be done by the courts but only by the machinery provided by the Act itself. The non-disclosure by the municipality of the basis of rate-payer's assessment, raises a *prima facie* case that elements other than the circumstances and property have been taken into consideration and that the assessment is illegal. 41 Cal. 163; 17 C. W. N. 1230; 19 Cal. L. J. 205; 20 I. C. 264.

Income derived by a person residing within the municipality from a zemindari outside the municipality is not "circumstances and property within the municipality" within the meaning of Section 85. 4 Pat. L. J. 673; 54 I. C. 227.

Amount deposited in the Post Office Savings Bank and in other Savings Banks in the municipal area is property within the municipality within the meaning of the words as used in Section 85* (a), Bengal Municipal Act. Introduction of the word circumstances in the section is not intended to restrict the term property but to widen the scope of the section and although it is not easy to define what the circumstances are, still the amounts which pass through the limits of the municipality and are available to the persons taxed at any moment and the fact that the persons are wealthy zamindars cannot be altogether ignored while estimating the circumstances and property. 1929 Cal. 452 (2); 56 Cal. 46.

It is not possible to define what is included in the term circumstances and social position but for the purposes of this case it may be said that the outgoings under the head referred to above are matters requiring consideration in determining the tax-paying capacity of the appellant and therefore the income tax paid and house rent and insurance premia should be deducted from the salary. 1928 Nag. 71.

When the Act speaks of circumstances within certain limits it means circumstances within those limits and not property giving rise to them and circumstances arising out of agricultural property are in this respect not different from circumstances arising out of other kinds of property. *Mal-guzari* villages outside the limits of the municipality cannot be circumstances within the limits of the municipality. 1928 Nag. 243; 107 I. C. 902.

* Corresponds to Section 21 (a) (ii) of the Punjab Small Towns Act of 1922.

Liability for tax.—In order to enforce the liability of a person to be assessed with tax under Section 85 of the Bengal Municipal Act, the municipality must show that he not only has a holding within the limits of the municipality, but that he has circumstances or property within those limits. The fact that he is in receipt of an income from property situate outside the limits of the municipality and spends that income within those limits would not satisfy the requirements of the section. The word “within” in Section 85 of the Bengal Municipal Act refers not only to property but also to circumstances 56 I. C. 821.

Under Section 85 of the Bengal Municipal Act, both the circumstances and the property of the person must be within the municipality, according to which he is to be taxed.

Therefore, where a person's total income of property situate within and outside a municipality was taken into consideration in imposing a tax upon him: *Held*, that the assessment was invalid. 12 I. C. 32.

Section 85 (a) of the said Act is not limited to a case where only one person occupies an entire holding, where the possession of a holding by each of the several persons is actual and as of right, and where a personal tax is in operation, each is subject to assessment according to his “circumstances and property” within the municipality. Where sale proceeds of tea grown outside the municipality are brought and placed in a bank to the credit of a corporation within the municipality they are their “circumstances and property” within the municipality and liable to be assessed to tax under Section 85 (a) of the Act. 34 Cal. L. J. 233.

“Within the municipality” in Section 85 govern both “circumstances” and “property” and the word “circumstances” must be interpreted as equivalent to “means”. When a tax-payer resident within the municipality brings to his residence his income, no matter where earned or from what source derived, the income thus brought, to be spent and enjoyed within the municipality, becomes part of his “means” or “circumstances” within the municipality and liable to assessment under Section 85 of the Act. 48 Cal. 443; 25 C. W. N. 47; 61 I. C. 511; 1922 Cal. 46.

In assessing tax under Section 85 (a), the property and means of the assessee outside the municipal limits should not be considered. The test to measure the means is to see what is earned within the municipality. 32 Cal. L. J. 210; 25 C. W. N. 45; 60 I. C. 284.

Tax on persons practising professions, etc.—*See* Notes under Section 61 of the Punjab Municipal Act, pp. 303–310.

Government servants have been specifically included in view of the judicial opinion expressed in 44 I. C. 910 though it may be still doubted whether a judicial officer can be said to carry on a profession.

Tax on vehicles.—*See* Notes under Section 61 of the Punjab Municipal Act, p. 311.

Profession tax and income-tax.—If it is not fixed at a flat rate for a particular profession, calling or a trade but varies according to the income of each individual assessee it is in the nature of a tax on income and can only be imposed with the previous sanction of the Governor-General in Council and if this is not done the assessee is not legally liable to pay it. 1928 Lah. 322; 9 Lah. 424.

Resistance or obstruction to a warrant issued for realizing such tax does not constitute an offence under Section 225 (b) of the Penal Code as the imposition is not lawful. 9 Lah. 424.

Haisiat Tax.—The question of liability mentioned in Section 83 of C. P. Act, 1922,¹ is not the question of the amount fixed in respect of the liability but of a person's liability to pay the tax at all. According to the principle of assessment the relative tax-paying capacity, that is the circumstances, social position and the size of the family of each person liable to be taxed, must be considered. The measure of the tax-paying capacity of a Government servant who has no other income or property in the municipality does not depend wholly upon the amount fixed as his salary. The tax is intended to be elastic and contemplates greater nicety of adjustment to the means of the payer than is usually possible in the matter of taxation. 1928 Nag. 71.

Occupation of a holding.—Any order to render a person amenable to a personal tax imposed upon a person occupying holding connotes actual possession by the person liable to be assessed or by his servant or agent in furtherance of the duties which such servant or agent was engaged to perform for the assessee. Such possession must be beneficial to the assessee. It must be intended that the possession should be continuous and not merely casual or intermittent and the assessee or joint assessee of the holding must be entitled to exclusive use and enjoyment of the holding as of right and not on sufferance free from interference from outsiders and

¹ Corresponds to Section 84 of the Punjab Municipal Act.

without the user and enjoyment being subject to a paramount right of regulation or control by the party who put them in possession or any other person. 1928 Cal. 832; 55 Cal. 1266.

It is the mode of user and not the length of the term that determines whether or not the occupation is such that the person occupying the holding is liable to assessment. In order to constitute an occupation as a servant it must be an occupation ancillary to the performance of the duties which the occupier was engaged to perform.

Where a Headmaster of a High School resided for some time in the attached Hostel with the permission of the School Committee and lived as an ordinary boarder under the Superintendent subject to the usual terms of boarding and lodging but was not entitled to the use of any particular seat or bed and was also liable to have his seat changed at any time as the Superintendent might direct, *held* that the Headmaster did not occupy a holding within Section 85 (a), Bengal Act and was not liable to be assessed. 1928 Cal. 832; 55 Cal. 1266.

The petitioners were *ijaradars* of a certain place described as a cattle market within the municipality and they made their collection of rent and carried on their business on the holding in respect of which the assessment had been made although they resided elsewhere. In that holding a cattle market was held on *hat* days and the holding remained vacant on other days. The persons who sold their wares in the market were a sort of licensees under the petitioner. The municipality brought a suit against the petitioner to recover tax under Section 85 (a). It was contended that this personal tax could not be levied as they were not occupiers of the holding: *Held* the *ijaradars* were the persons who really occupied the holding within the municipality. 1928 Cal. 591; 32 C. W. N. 1170.

22. The committee may impose—

- (a) with the previous sanction of the local Government, any tax scheduled as exempted from the provisions of sub-section (3) (a) of Section 80-A of the Government of India Act by rules made under the said Act.
- (b) with the previous sanction of the Governor-General in Council any other tax.

Taxes wh
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Notes.—This corresponds to sub-section (3) of Section 61 of the Punjab Municipal Act. See Notes and the Schedule of Taxes on pp. 292—314.

reparation
assessment
in case of
own-rate on
buildings and
lands.

23. (1) Every committee which decides to impose a town rate in the form of a tax upon the owners or occupiers of houses or lands within the limits of the small town, under Section 21 (a) (i) shall, subject to such rules as the local government may make in this behalf, as soon as may be, prepare an assessment list of all houses or lands according to the annual value of which the tax is to be imposed.

(2) Every assessment list prepared under sub-section (1) shall contain the following particulars—

- (a) a description of the property sufficient for its identification;
- (b) the name of the owner or occupier; and
- (c) the annual value of the property.

Notes.—Cf. Section 63 of the Punjab Municipal Act and notes thereunder.

reparation
assessment
in case of
own-rate on
buildings and
lands.

24. (1) Every committee which decides to impose a town rate in the form of tax upon all residents of the small town assessed according to their circumstances, under Section 21 (a) (ii) shall, subject to such rules as the local Government may make in this behalf, as soon as may be, prepare an assessment list of all residents of the small town.

(2) The tax shall be assessed in the following manner:—
For each person liable to assessment a unit, to be called the assessment unit, shall be fixed, the amount of which shall indicate the relative tax-paying capacity of such persons in comparison with other assesses. The total amount payable by any assessee will then be his assessment unit multiplied by a given factor which shall be the same for all assesses and shall be determined as hereinafter provided with reference to the total amount to be raised from the tax.

(3) Every assessment list prepared under sub-section (1) shall contain the following particulars:—

- (a) The names of the persons upon whom the tax is to be imposed; and
- (b) The amount of assessment unit at which each such person is assessed.

Notes.—The assessment unit fixed will be variable in the case of each assessee according to his paying capacity. The assessment list will only give this unit as against each assessee. The actual amount to be paid by each will be this unit multiplied by a given factor. This factor will be the same in case of all the assesses.

25. (1) A copy of every assessment list prepared under Section 23 or Section 24 shall be posted at the place of meeting of the committee in a position accessible to the public, and such posting shall be proclaimed by beat of drum.

Publication of assessment lists and provisions with regards to objections and appeals.

(2) Any person whose name appears on an assessment list may, within 30 days of the date on which the copy of such list was posted under sub-section (1), make objection in writing to the committee against the assessed annual value of his property, or against the amount of the assessment unit at which he is assessed. The committee shall consider any such objection received by the due date, and, after hearing the objector or his authorized agent, shall record such order on the objection as it may think fit.

(3) Any person who has made an objection under sub-section (2) and is dissatisfied with the order passed thereon by the committee may, within 15 days of the date of the pronouncement of such order, appeal against such order to the Deputy Commissioner, whose decision on such appeal shall be final: provided that for sufficient cause shown the Deputy Commissioner may hear an appeal preferred after the lapse of 15 days from the date of the pronouncement of such order.

(4) The Deputy Commissioner may delegate his powers under sub-section (3) to any Assistant Collector of the 1st grade.

(5) No court-fee shall be payable on an appeal presented under sub-section (3) of this section.

Notes. — Cf. Sections 65 and 66 of Punjab Municipal Act.

Clause 3 corresponds to Section 84 of the Municipal Act.

For Notes *see* commentary under Sections 65, 66 and 84 of the Municipal Act.

26. (1) Every assessment list prepared under Section 23 or 24 and modified in accordance with any orders that may be passed under Section 25 shall remain in force for a period of five years: provided that the committee may at any time amend an assessment list by inserting or omitting the name of any person whose name ought to have been or ought to be, inserted or omitted, or by inserting or omitting any property which ought to have been, or ought to be, inserted or omitted, or by altering the assessed annual value of any property which has been erroneously assessed through fraud, accident or mistake, whether on the part of the committee or of the assessee, after giving notice to any person affected by the amendment of a time, not less than one month from the date of service of such notice, at which

Period for which assessment list shall remain in force and provision for amendment of assessment list.

the amendment is to be made, and such person may, before the time fixed in such notice, make objection to such amendment in writing to the committee and may appeal against any order passed by the committee on such objection in the manner laid down in Section 25, and the provisions of Section 25 shall, as nearly as may be, apply to the disposal of any such objection or appeal.

(2) Every person whose name appears in an assessment list shall be furnished by the committee, free of charge, with a copy of the entry relating to such person in the assessment list in its final form after such modifications have been made as may be necessitated by any order passed under Section 25 or clause (1) of this section.

Notes.—*Cf.* Sections 66 and 67 of the Punjab Municipal Act. Under Section 66 the assessment list remains in force for one year but can be amended.

See Notes under Sections 66 and 67.

Amount to
be raised by
town-rate
each year to
be sanctioned
by the
Deputy Com-
missioner.

27. (1) Every committee which has decided to impose a town rate under Section 21 (a) shall on or before the first day of January in each year determine the amount to be raised by means of the town-rate in such year: provided that in the case of a town-rate imposed in the form of a tax on the owners or occupiers of houses or lands within the limits of the small-town, the amount to be raised by the means of the town-rate in any year shall be such that the percentage of assessed annual value payable by each person whose name appears in the assessment list shall not exceed 12½.

(2) Every committee which has decided to impose a town-rate shall, when it submits its budget for the ensuing financial year as required by Section 46 of the Act, report to the Deputy Commissioner the amount which it has decided to raise by means of the town-rate. The amount of town-rate which is actually to be raised in the ensuing financial year shall be the amount entered in the budget as finally sanctioned by the Deputy Commissioner under Section 46 of this Act.

Notes.—The amount of taxes to be levied will depend on the budget expenditure as sanctioned by the Deputy Commissioner. Whatever the amount provided in the budget for expenditure for the ensuing year the taxes on houses and lands to be collected from each inhabitant cannot exceed 12½ per cent. on the annual value of lands and buildings of each inhabitant in the town.

Town committee when submitting its budget proposals has to report to Deputy Commissioner the amount of town-rates it has decided to raise.

28. When the amount of the town-rate to be raised in the ensuing financial year has been finally determined under sub-section (2) of Section 27—

Publication of annual rate of town-rate and procedure for making demand.

(1) the committee shall give public notice—

(a) of the percentage of assessed annual value payable by each person whose name appears in assessment list, where the town-rate has been imposed in the form of a tax on the owners or occupiers of houses or lands within the limits of the small town; or

(b) of the number of assessment units payable by each person whose name appears in the assessment list, in cases where the town-rate has been imposed in the form of a tax upon all residents of the small town;

(2) the committee shall cause to be delivered to each person on the assessment list a bill for the amount of town-rate for which he is liable;

(3) the amount of town rate for which a person is liable as shown in the bill delivered to him under sub-section (2) shall be payable in such instalments, and each instalment shall become due on such date as the committee may by resolution in that behalf prescribe, and every bill delivered under sub-section (2) shall indicate the amount of the instalments and the dates on which they are due: provided that any person who so desires may pay the whole amount for which he is liable in one instalment in advance.

Notes.—When the budget is sanctioned by the Deputy Commissioner then the town committee is in a position to know their requirements and are therefore required to inform the tax-payers that they have to pay so much per cent. on the assessed annual value of the property or the number of assessment units each has to pay. After public notice has been given then a bill for the tax due from each assessee has to be delivered to him and he will be required to pay the taxes due in such instalments and on such dates as will be fixed by the town committee by resolution.

29. (1) A committee may pass a resolution to propose the imposition of a tax under Section 22 of this Act.

Procedure for imposition of taxes other than a town-rate.

(2) When such a resolution has been passed the committee shall publish a notice, defining the class of persons or description of property to be taxed, the rate of the tax to be imposed and the system of assessment to be adopted.

(3) Any inhabitant of the small town objecting to the proposed tax may within thirty days from the publication of the said notice submit his objection in writing to the committee; and the committee shall take his objection into consideration.

(4) If no such objection is received within the said period, or if all such objections, having been considered, are deemed to be insufficient, the committee may forward its proposal to the local Government, with the objections, if any, which have been submitted as aforesaid, and its decision thereon.

(5) The local Government on receiving such proposal may sanction or refuse to sanction the same, or return it to the committee for further consideration.

(6) When any such proposal of the committee has been sanctioned by the local Government, the latter shall notify the imposition of the tax in accordance with such proposal, and shall specify a date on which the tax shall come into force.

(7) A notification of the imposition of a tax under this Act shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act.

(8) Every tax imposed under this section shall remain in force until it is cancelled by a notification of the local Government.

Notes.—*Cf.* Section 62 of the Municipal Act and Notes thereunder.

Procedure
for making
demands in
respect of
taxes other
than a town-
rate.

30. (1) If a tax is imposed under Section 21 (b) or (c), the committee shall deliver a bill to every person by whom the tax is payable for the amount of tax payable.

(2) Such tax shall be payable in such instalments and each instalment shall be due on such date as the committee may by resolution in that behalf prescribe, and every bill delivered under sub-section (1) shall indicate the amount of the instalments and the dates on which they are due : provided that any person who so desires may pay the whole amount for which he is liable in one instalment in advance.

(3) If a tax is imposed under Section 22 the local Government shall by rule prescribe the method by which such tax shall be assessed and collected.

Notes.—*Cf.* Sections 79 and 80 of the Punjab Municipal Act and *see* Notes under those sections.

31. If any person fails to pay any tax, or any instalment of any tax, or any fee or any other sum due to the committee under this Act, or due to the committee as rent for any immovable property vested in or under the control of the committee, on or before the date on which payment is due, the committee shall, ordinarily within fifteen days after such date, cause a writ of demand to be served on such person, or delivered at or affixed to his place of residence within the small town, or addressed by registered post to such place of residence or any other place where he may be known to reside. Any postal charges incurred ¹[and any fee leviable for the writ of demand] under this section may be added to the arrear claimed and recovered as such.

Recovery
of arrears of
taxes and
other sums.

Notes.—Cf. Section 80 of Punjab Municipal Act and Notes thereunder.

32. Arrears of any tax or of any instalment of any tax or of any fee or of any other sum due to the committee under this Act or of any sum due as rent for any immovable property vested in or under the control of the committee, may be recovered on the expiry of three weeks from the date of the issue of writ of demand under Section 31 on application to a magistrate having jurisdiction within the limits of the small town or in any other place within the Punjab where the defaulter may for the time being reside, by the attachment and sale of any movable property belonging to such defaulter and within the limits of such magistrate's jurisdiction.

Recovery
of arrears of
taxes and
other sums

Notes.—This corresponds to Section 81 of the Municipal Act as amended recently. Rent of immovable property can be recovered by application. The word "due" is used instead of the word "claimable."

It is questionable whether the jurisdiction of the magistrates will be only ministerial as has been held to be under the corresponding provisions of the Municipal Act. The committee will have to prove that the sums demanded are due and the magistrate will have to determine the amount due in each case. In case of recoveries of rent the magistrates may have to decide intricate questions of rights before ordering attachment.

33. Subject to confirmation by the Deputy Commissioner in the case of individuals and by the Commissioner in the case of classes of persons the committee may exempt any

Exemption
from tax
tion.

¹Added by Section 7 of Punjab Small Town Amendment Act, 1926.

person or class of persons in whole or in part from the payment of any tax.

Notes.—Cf. Section 70 of the Punjab Municipal Act, 1911 and for Notes *see* the commentary on pp. 334-5.

CHAPTER V.

POWERS FOR SANITARY AND OTHER PURPOSES

Exclusion
of jurisdiction
of
District
Boards

34. In any small town any matter, which under the provisions of this Act comes within the scope of the authority of the town committee and which in accordance with Section 20 of the Punjab District Boards Act, 1883, is under the control and administration of the District Board, may notwithstanding anything in the said section, be placed by order of the Commissioner of the Division under the control and administration of the town committee and thereupon the district board shall cease to exercise control thereof.

Notes.—**Scope of the authority of the town committee.**—*See* Section 16 of the Act which indicates the scope of the authority of the town committee.

Section 20 of the District Board Act is as follows:—

20. (1) The following matters shall, subject to such exceptions and conditions as the local Government may make or impose, be under the control and administration of each district board within the area subject to its authority:—

- (a) the management of all property vested in the district board;
- (b) the construction, repair and maintenance of public roads and other means of communication;
- (c) the establishment, management, maintenance and visiting of public hospitals, dispensaries, *sarais* and schools, and the construction and repair of all buildings connected with these institutions;
- (d) the training of teachers and the establishment of scholarships;
- (e) the supply, storage and preservation from pollution of water for drinking, cooking and bathing purposes; and
- (f) the planting and preservation of trees;

(2) The local Government may direct that any of the following matters shall, subject to such exceptions and conditions as it may make and impose, be under the control and administration of a district board within the area subject to its authority:—

- (g) the management of any property vested in His Majesty;
 - (h) the establishment, maintenance, visiting and management of markets, rest-houses, encamping-grounds and other public institutions, and the construction and repair of all buildings connected with these institutions;
 - (i) the construction and repair of embankments, and the supply storage and control of water for agricultural purposes;
 - (j) the preservation and reclamation of soil, and the drainage and reclamation of swamps;
 - (k) the construction, repair and maintenance of famine preventive works and the establishment and maintenance of such relief-works, relief-houses and other measures in time of famine or scarcity as may be entrusted to the charge of the board by the local Government;
 - (l) the registration of births, marriages and deaths;
 - (m) fairs and agricultural shows and industrial exhibitions;
 - (n) the establishment and management of pounds including, where the Cattle-Trespass Act, 1871 is in force, such functions of the local Government and the Magistrate of the district under that Act as may be transferred to the board by the local Government;
 - (o) the management of such public ferries as may be entrusted to the charge of the board under Section 7-A of the Northern India Ferries Act, 1878, as amended by this Act;
 - (p) any other local works or measures likely to promote the health, comfort, convenience and interests of the public or the agricultural or industrial prosperity of the country; and
 - (q) any other matters which the local Government may declare to be fit and proper matters to be taken under the control and administration of the board.
- (3) The local Government may cancel or modify any direction given by it under sub-section (2).
- (4) A district board shall, so far as the funds at its disposal permit, make due provision for all matters placed under its control or administration by or under this section.

It will be seen that the scope of the authority of district boards is much wider; only such matters out of several matters mentioned in Section 30 can be placed under the control of the small town committee which are also within the scope of Section 16 of the Small Town Act.

Powers of
issuing orders
for sanitary
and other
purposes.

35. Subject to the provisions of Section 34 and to any rules which the local Government may make in this behalf a committee may, and on the requirement of the Deputy Commissioner, shall, by general or special order in writing, provide for all or any of the following matters:—

- (a) the protection from pollution, the purification and periodical examination of all sources of water¹ used for drinking purposes;
- (b) the prohibition of the removal or use for drinking purposes of any water from any source when such removal or use causes or is likely to cause disease or injury to health, and the prevention of such removal or use by the filling in of any well, tank or other receptacle or by any other method that may be considered advisable;
- (c) the setting apart of suitable places for bathing, for washing and watering animals and for washing clothes;
- (d) the disposal of corpses by burning and burial;
- (e) the disposal of mad and stray dogs;
- (f) prohibition of the deposit of manure, rubbish, offensive matter or the dead bodies of animals, except in places fixed by the committee;
- (g) the regulation of offensive or dangerous callings or trades;
- (h) the repair or removal of dangerous or ruinous buildings;
- (i) the removal of noxious vegetation;
- (j) the cleansing of any filthy building or land, and the closing of any building not fit for human habitation;
- (k) the disinfection of any building or article which the committee may consider necessary in order to prevent the spread of any infectious or contagious disease;
- (l) the setting apart and regulation of places for the slaughter of animals intended for sale;

¹Substituted for 'waters' by Section 8 of the Punjab Small Town Amendment Act, 1925.

- (ll) ¹["the prevention or removal of any movable or immovable encroachment over any street, drain, sewer or channel and the recovery of the expenses incurred by such prevention or removal or in rectifying any damage caused to the street, drain, sewer or channel by such prevention or removal;"]
- (m) the regulation of the erection or re-erection of buildings ¹[including the prevention of the erection or re-erection of any building for any reason the committee may deem to be just and sufficient or in pursuance of a general scheme sanctioned by the Commissioner restricting the erection or re-erection of buildings, or any class of buildings];
- (n) the provision, repair or removal of drains, privies and latrines;
- (o) the prohibition of driving any vehicle after dark without proper lights;
- (p) the licensing of premises for the manufacture, preparation for sale or sale of article of food or drink, and the regulation of the transport within the small town of articles of food and drink;
- (q) the licensing of vehicles kept or plying for hire, the control of traffic, the setting apart of places where vehicles plying for hire may stand;
- (r) the prohibition of the picketing of cattle in any street or public place;
- (s) the setting apart of places for the excavation of earth for building or making bricks;
- (t) the prohibition of brick-kilns and potters' kilns in any specified area;
- (u) licensing of store houses for any explosive or for petroleum or any inflammable oil or spirit;
- (v) licensing of yards or depot for trade in hay, straw, thatching grass, wood, charcoal or coal, or other dangerously inflammable material;
- (w) the prohibition of the keeping of a brothel or the residence of a public prostitute in any specified part of the town;

¹Added by Section 8 of the Punjab Small Town Amendment Act, 1925.

- (x) ¹[the proper registration of births and deaths] ;
 (y). ²the licensing of persons selling or importing for sale milk, butter, ghee, curd, meat, game, fish and poultry.

Notes.—It will be seen the duties laid on the town committees are discretionary but they can be made obligatory at the requirement of the Deputy Commissioner.

As regards distinction between discretionary and obligatory duties of committee *see* Notes on p. 451 of the Municipal Act.

Clauses (a) and (b).—*Cf.* the provisions of Sections 96, 103, 104, 128, 131, 149 and S. 188 (e) (vi) of the Municipal Act and Notes under those sections.

Clause (c).—*Cf.* Section 106 of the Municipal Act and *see* Notes under that section.

Clause (d).—*Cf.* Sections 107 and 188 (e) (v) of Municipal Act and Notes under those sections.

Clause (e).—*Cf.* Sections 109, 110 and Section 188 (s) of Municipal Act.

Clause (f).—*Cf.* provisions of Sections 108, 154, 168 of the Municipal Act and *see* Notes under those sections.

Clause (g).—*Cf.* provisions of Section 121 of the Municipal Act and *see* Notes under that section. *See* Notes on power of regulation and scope of power of regulation on pp. 635 and 637 of Municipal Act.

Clause (h).—*Cf.* provisions of Sections 113, 114 and *see* Notes under those sections.

Clause (i).—*Cf.* provision of Section 117 of Municipal Act and *see* Notes thereunder.

Clause (j).—*Cf.* provisions of Sections 115 and 116 of Municipal Act and *see* Notes under those sections.

Clause (k).—*Cf.* the provisions of Sections 143, 145 of Municipal Act and *see* Notes under those sections.

Clause (l).—*Cf.* *See* Sections 167 and 188 (e) (i) of the Municipal Act and *see* Notes under those sections.

Clause (ll).—*Cf.* Sections 172, 173 and 219-A.

¹ Added by Section 8 of the Punjab Small Town Amendment Act, 1925.

² Added by Section 8 of the Punjab Small Town Amendment Act, 1926.

Clause (m).—*Cf.* the provisions of Sections 174, 189, 193 and 195 of the Municipal Act.

Clause (n).—*Cf.* Sections 125, 126, 127, 128 of the Municipal Act and *see* Notes under those various sections.

Clause (o).—*Cf.* provisions of Section 183 of Municipal Act.

Clause (p).—*Cf.* Sections 188 (e) and 197.

Clause (q).—*Cf.* Section 188, clauses (a), (b) and (p) of Municipal Act and *see* Notes under those provisions.

Clause (r).—*Cf.* Section 182 of the Municipal Act.

Clause (s).—There is no corresponding provisions in Municipal Act. *Cf.*, however, Sections 173 and 198 of that Act.

Clause (t).—*Cf.* Section 121 (2)—Under clause (g) such places may be regulated. This provision will empower the town committees to restrict these trades to specified portions of the town.

Clauses (u) and (v).—*Cf.* Section 121 of Municipal Act and Notes thereunder.

Clause (w).—*Cf.* Section 152 of Municipal Act.

Clause (x).—*Cf.* S. 188 (c) of Municipal Act.

Clause (y).—*Cf.* S. 197 of Municipal Act and *see* Notes under Section 197.

This section is very general in its terms and does not give any indication of the nature and extent of regulations and restrictions which may be imposed under this section. These will depend upon the circumstances of each town and need not be as elaborate as similar regulations under the Municipal Act.

In the Model General Orders framed under Section 195, it will be noticed that no provision is made for issue of notice requiring the demolition of re-erection of buildings. Therefore under the existing general orders a person re-erecting his building can not be dealt with under the existing model orders. The town committees will be powerless to deal with buildings re-erected. *See* 1932 Lah. 597.

36. (1) Before making any general order under Section 35 the committee shall give public notice of its intention to make such general order. Any inhabitant of the small town may within thirty days of the publication of such notice submit an objection to such general order in writing to the committee. On the expiry of thirty days from the

Procedure
for making
general
orders.

date of such publication the committee shall take into consideration any objections which may have been received and ¹[may make such amendments of the general order as it may deem fit and shall then submit the general order as amended] together with the objections, if any, which have been received, through the Deputy Commissioner, to the Commissioner who may sanction or refuse to sanction the issue of such general order ²[or return it to the committee for further consideration].

(2) A general order sanctioned under sub-section (1) shall be published in such manner as may be prescribed in the rules made by the local Government under this Act.

Notes.—Cf. Sections 200 and 201 of the Municipal Act.

It will be seen that the order as such by the committee had to be sanctioned or refused before the amendment of the section. Power is now reserved to sanction general orders with modifications. The town committees have been authorized to alter the general order published to meet the objections received since publication. If the order on receipt of objection is found objectionable, the modified order will not require to be published again.

Commissioners have no power to cancel general orders which have been sanctioned. The town committee will have power to vary or cancel such orders with approval of commissioners.

Appeals
against
special
orders

37. Any person to whom any special order has been issued by the committee, the President or the Vice-President under Section 35 may within fifteen days of the date of such special order appeal against such order to the Deputy Commissioner whose decision on such appeal shall be final and shall not be called in question in any Court : provided that no appeal shall lie from any special order passed by a committee, the President or the Vice-President under clause (e) or (k) of Section 35; provided further that in the case of any special order issued by the committee, the President or the Vice-President on the requirement of the Deputy Commissioner, the appeal, if any, shall lie to the Commissioner whose decision shall be final.

Notes.—Section 35 deals both with special and general orders. As regards general orders the provision under Section 36 provides a sufficient safeguard against any arbitrary

¹Substituted by Section 9 of the Punjab Small Town Amending Act, 1926 for words "shall then submit such general order".

²Added by Section 9 of Punjab Small Town Amendment Act, 1926.

action of the town committee and affords an opportunity to the inhabitants to raise their voice against any abuse of the powers by town committees. Section 37 affords a right of appeal when special orders are issued against any individual. Though Section 35 speaks of orders issued by committees, this section also speaks of orders issued by President or Vice-President as powers under Section 35 can be delegated to President and Vice-President by Section 42.

38. Any person who commits a breach of any general or special order made by a committee under Section 35 and duly upheld by competent authority shall be liable on conviction to a fine which may extend to twenty rupees and when the breach is a continuing breach to a further fine which may amount to two rupees for every day after the first during which the breach continues.

Penalty
for breach of
orders.

Notes.—Cf. the provisions of Sections 199 and 219 of the Municipal Act. For Notes *see* those sections. Penalties provided are much lighter than those under the Municipal Act.

39. A committee may for the purpose of carrying out, establishing or maintaining any system of drainage, sewerage or water-supply carry any pipe, drain, sewer or channel of any kind into, through, across, under, over or up the side of any land or building whatever situate within the limits of the small town, and may at all times do all acts and things which may be necessary or expedient for repairing or maintaining any such pipe, drain, sewer or channel : provided that—

Power of
committee to
lay or carry
pipes, drains
or sewers
through private
property
subject to
payment of
compensation
for damage
sustained.

- (a) reasonable notice shall be given to the owner or occupier of any such land or building ; and
- (b) reasonable compensation shall be paid to the owner or occupier for any damage sustained by him and directly occasioned by the carrying out of any such operations or for any substantial interference with the rights of such owner or occupier to the due enjoyment of such land or building ;
- (c) in the event of any dispute as to the notice to be given or the compensation to be paid, the matter shall be referred by the committee to the Deputy Commissioner whose decision shall be final.

Notes.—This corresponds to the provisions of Sections 132 and 133 of the Punjab Municipal Act. The section is, however, differently worded and some of the clauses as to causing as little damage as possible do not find a place in the section. Even without this provision the town committee

must cause as little damage in carrying out their works as possible.

Disputes as to notice and amount of compensation are to be decided by Deputy Commissioner whose decision is made final.

For Notes under this section *see* the Notes under Sections 132 and 133 of the Punjab Municipal Act.

Power to
attach brac-
kets for
lamps, name-
plates of
streets and
numbers of
houses and
penalty for
destroying
the same

40. A committee may attach to the outside of any building brackets for lamps or name-plates of streets, and may cause a number to be affixed to every house in the small town for the purpose of identifying it, and any person who wilfully disturbs, defaces or destroys any such bracket, name-plate or number shall be liable on conviction to a fine which may extend to twenty rupees.

Notes.—This section comprises the provisions of Sections 176, 177 and 179 of the Municipal Act

Power to
levy certain
fees.

41. (1) A committee may charge fees for—

- (a) vehicle licences;
- (b) the use of slaughter-houses and markets ;
- (c) the use of stands for public vehicles and of cart-stands ;
- (d) licenses or premises for the manufacture, preparation for sale or sale of articles of food or drink ;
- (e) the temporary or permanent occupation of any portion of a public street ;
- (f) water supplied by private connections ;
- (g) licenses for store houses for any explosive or for petroleum or any inflammable oil or spirit ;
- (h) licenses for yards or depot for trade in hay, straw, thatching grass, wood, charcoal or coal, or other dangerously inflammable material.

(2) The rates of the fees to be charged must in each case be approved by the Commissioner.

Notes.—This is a general provision enabling town committees to levy fees for licenses and for the use of town properties and for services rendered. The fees and rates will require the previous approval of the Commissioner.

Clause (a).—*Cf.* Section 188 (a) of Municipal Act.

Clause (b).—*Cf.* Sections 167 and 188 (e) (ii).

Clause (c).—This gives greater powers to the town committees than those possessed by the municipal committees.

Clause (d) — Cf. Section 173 of Municipal Act and *see* Notes thereunder.

The municipal committees have now power to charge fee for permanent occupation of streets. The grant of such powers to committees as these will enable them to have effective control over immovable encroachments which amount to permanent occupation of public streets.

Streets or public streets are not defined in the Act and must therefore be understood in their ordinary dictionary meaning. For what constitutes streets or public streets *see* Notes under Section 3 (12) of the Municipal Act.

Clause (f).—Cf. the provisions of Sections 97 and 98.

Clauses (g) and (h).—Cf. Section 121 (3) of the Municipal Act.

42. A committee may, with the sanction of the Commissioner, delegate any of its powers under Section 11 or 14 or 35, in respect of special orders only to its President or Vice-President.

Power to
delegat-
certain
powers.

Notes.—Cf. the provisions of Section 33 of the Municipal Act and *see* the Notes thereunder.

43. When any land whether within or without the limits of the small town, is required for the purposes of this Act, the local Government may, at the request of the committee, proceed to acquire it under the provisions of the Land Acquisition Act, 1894 ; and on payment by the committee of the compensation awarded under that Act, and any other charges incurred in acquiring the land, the land shall vest in the committee.

Acquisitio
of land.

Notes.—Cf. Section 58 of the Punjab Municipal Act.

44. A committee, or with the authorization of the committee, the President or Vice-President of a committee, may accept from any person against whom a reasonable suspicion exists that he has committed an offence punishable under this Act or under any rule made under this Act, a sum of money by way of composition for such offence. On payment of such sum no further proceedings shall be taken against such person in respect of such offence.

Compo-
sition of offe-
ces.

Notes.—Cf. Section 229 of the Punjab Municipal Act and *see* Notes thereunder. The composition of an offence will not permit the offender to continue the offence.

If the offender is again found to commit the offence he can be prosecuted or the fresh offence can be compounded.

Authority
for prosecu-
tion.

45. No court shall take cognizance of any offence punishable under this Act or under any rule made under this Act, except on the complaint of the committee or of some person authorized by name or office by the committee in this behalf.

Notes.—This corresponds to Section 228 of the Municipal Act; *see* Notes under that section.

Prosecution instituted by a person not duly authorized cannot be ratified by subsequent authorization. *Bowyer & Co., Limited v. Mathur* (1919) 5 L. S. G. R. 90.

CHAPTER VI.

CONTROL AND GENERAL PROVISIONS.

Preparation
of annual budget

46. (1) Subject to any rules which the local Government may make in this behalf every committee shall on or before the tenth day of January each year submit to the Deputy Commissioner an estimate of its income and expenditure during the ensuing financial year. Such estimate shall be called the annual budget of the small town.

(2) The Deputy Commissioner may sanction the budget so submitted or may return it for reconsideration by the committee.

(3) Except with the sanction of the Deputy Commissioner no committee shall incur expenditure in excess of the expenditure provided for in the budget as finally sanctioned by the Commissioner.

Notes.—This matter is governed by account code so far as committees are concerned.

Power to
suspend
action of a
committee

47. The Commissioner or Deputy Commissioner may by order in writing suspend the execution of any resolution or order of a committee if in his opinion such resolution or order is in excess of the powers conferred on the committee by law or if the execution of such resolution or order is likely to lead to a breach of the peace or to cause injury or annoyance to the public or to any class or body of persons.

Notes.—This section corresponds somewhat to the provisions of Section 232 of the Punjab Municipal Act. *See* Notes under Section 232.

Power to
provide for
the perform-
ance of duties
in case of
default of a
committee.

48. If a committee neglects or refuses to perform any prescribed duty, the Deputy Commissioner may perform or cause to be performed such duty, anything done by the Deputy Commissioner in exercise of the power conferred by this section shall be considered to have been done by the committee.

Notes.—*Cf.* Section 234 of the Punjab Municipal Act and *see* Notes under that section.

49. (1) If in the opinion of the local Government a committee persistently makes defaults in the performance of the duties imposed on it or exceeds or abuses its powers, the local Government may, by notification, in which the reasons for so doing shall be stated, declare the committee to be suspended.

Power of local Government to suspend a committee.

(2) If a committee is suspended the following consequences shall ensue:—

(a) All members of the committee shall, from the date of the notification, vacate their seats.

(b) All powers and duties of the committee may, until the committee is reconstituted, be exercised and performed by such a person or persons as the local Government may appoint in this behalf.

(c) All property vested in the committee shall, until the committee is reconstituted, vest in the local Government.

(3) The local Government may at any time constitute another committee in the place of any committee suspended under this section.

Notes.—*Cf.* Section 238 of the Punjab Municipal Act.

50. ¹[Subject to the provisions of sub-section (7-b) of Section 4 of the Punjab Municipal Act, 1911], when any area ceases to be a small town for the purposes of this Act, the balance of the town fund, if any, shall be applied for the benefit of the inhabitants of the said area in such manner as the local Government may direct.

Application of town fund when any area ceases to be a small town

Notes.—*Cf.* Section 10 of the Punjab Municipal Act.

51. (1) The local Government may make rules applicable to all or any small town—

Power of local Government to make rules.

²[(a) for determining the mode and time of appointment or election of members of Small Town Committees, the term of office, allowances (if any) and the qualifications and disqualifications of such members, and the qualifications and disqualifications of voters and generally for regulating all elections under this Act;]

¹ Prefixed by Section 9 of the Punjab Small Town Amendment Act, 1925.

² Substituted by Section 10 of the Punjab Small Town Amendment Act, 1925.

- (b) as to the transaction of business by committees, the accounts to be kept, and the returns, statements and reports to be submitted;
 - (c) regulating the establishment of provident funds;
 - (d) regulating the appointment, dismissal or suspension by committees of their officers and servants and the grant of leave, absentee and acting allowance, and gratuities on retirement to such officers and servants; provided that these conditions of leave, allowances and gratuities shall not, save with the special sanction of the Governor-General in Council be more favourable than those prescribed for Government servants;
 - (e) as to the assessment and collection of taxes;
 - (f) as to the powers and duties of committees with respect to matters provided for in Section 35 of this Act;
 - (g) generally to regulate the powers and duties of committees and to carry out the purposes of this Act.
- ¹[(2) rules under clause (a) of sub-section (1) may among other matters provide—
- (i) for the definition of the practices at elections held under the provisions of this Act which are to be deemed to be corrupt;
 - (ii) for investigation of allegations of corrupt practices;
 - (iii) for making void the election of any person proved to the satisfaction of the local Government to have been guilty of a corrupt practice or to have connived at or abetted the commission of a corrupt practice or whose agent has been so proved guilty or the results of whose election has been materially affected by the breach of any law or rule for the time being in force;
 - (iv) for rendering incapable of office on a Small Town Committee either permanently or for a term of years any persons who may have been proved guilty as aforesaid of a corrupt practice or of conniving or abetting the same;
 - (v) for prescribing the authority by which questions relating to the matters referred to in clause (a) of sub-section (1) shall be determined; and

¹ Inserted by Section 10 of the Punjab Small Town Amendment Act, 1925.

(vi) for authorising courts to take cognizance of the breach of any such rules on the complaint of the Deputy Commissioner or some person authorised in writing by the Deputy Commissioner;]

(3) In making rules under ¹[clauses (a) and (e) of subsection (1)] the local Government may direct that the breach of any such rule shall be punishable with fine which may extend to fifty rupees.

Notes.—Cf. Section 240 of the Municipal Act and Notes thereunder.

²[52. The local Government may invest any person or persons authorised by it to hold an inquiry into the conduct of an election or into allegations of corrupt practices or intimidation at an election with all or any of the powers conferred upon Commissioners appointed to hold an inquiry into an election by the provisions of Part II of the Indian Election Offences and Inquiries Act, 1920, and may prescribe the procedure to be followed, and provide for the execution of any order as to costs passed by such person or persons in such inquiry.]

Notes.—Cf. Section 247 and Chapter XIV of the Municipal Act.

¹ Substituted by Section 10 (iii) of the Punjab Small Town Amendment Act, 1925.

² Added by Section 11 of the Punjab Small Town Amendment Act, 1925.

THE PUNJAB SMALL TOWNS (AMENDMENT) ACT, 1925.

THE PUNJAB ACT, IV OF 1925.

[Received the assent of the Governor on the 22nd March 1925,
and that of the Governor-General on 22nd April 1925.]

An Act to amend the Punjab Small Towns Act, 1921¹.

Preamble.

WHEREAS it is expedient that certain amendments shall be made in the Punjab Small Towns Act, 1921¹, in the manner hereinafter appearing, and WHEREAS the previous sanction of the Governor-General under sub-section (3) of Section 80-A of the Government of India Act has been obtained, IT IS HEREBY ENACTED as follows:—

Short title
and com-
mencement.

1. (1) This Act may be called the Punjab Small Towns (Amendment) Act, 1925.

(2) It shall come into force on such date as the local Government may by notification appoint in this behalf.

A m e n d -
ment o f
Section 3 o f
the Punjab
Small Towns
Act, 1921.

2. After sub-section (3) of Section 3 of the Punjab Small Towns Act, 1921 (hereinafter referred to as the said Act), the following new sub-section shall be inserted, namely:—

“(3-a) When a local area, the whole or part of which was a notified area under the Punjab Municipal Act, 1911, is declared to be a small town under this section, the Small Town Committee shall be deemed to be the perpetual successor of such Notified Area Committee in respect of all its rules, bye-laws, taxes and all other matters whatsoever to the extent to which they are lawful for a small town under this or any other Act.”

A m e n d -
ment o f
Section 4 o f
the Punjab
Small Towns
Act, 1921

3. To sub-section (2) of Section 4 of the said Act, the following further proviso shall be added, namely:—

“Provided further that if any seat on a Small Town Committee is required to be filled by election and a member is for any reason not elected for it, the Commissioner may fill that seat by appointment.”

I n s e r t i o n
of a new
Section 4-A
in the
Punjab Small
Towns Act,
1921.

4. After Section 4 of the said Act, the following new section shall be inserted, namely:—

“4-A. Notwithstanding anything contained in the Indian Oaths Act, 1873 every person who is elected or appointed to be a member of a Small Town Committee shall before taking his seat take or make, at a meeting of the said committee, an oath of affirmation of his allegiance to the Crown, in the following manner, namely:—

¹ Altered to 1922 and references to Act 1921 should be read as 1922 throughout.

" 'I, A B, having been ^{elected}_{appointed} a member of this committee do solemnly swear (or affirm) that I will be faithful and bear true allegiance to His Majesty the King-Emperor of India, his heirs and successors, and that I will faithfully discharge the duty upon which I am about to enter.'

" Provided that

" (i) if any such person omits or refuses to take or make such oath or affirmation, his election or appointment, as the case may be, shall be deemed to be invalid;

" (ii) in the case of such invalid election the person, if any, who obtained the next largest number of votes from amongst those who failed to secure election shall be deemed to have been duly elected, or if the election was uncontested a fresh election shall be held, or in the case of such invalid appointment the Commissioner shall appoint another person in the manner prescribed in sub-section (2) of Section 4, and in such case the proviso to sub-section (2) of Section 4 shall not apply ;

" (iii) no person whose election or appointment has been deemed to be invalid under this section shall be eligible for election or appointment to any Small Town Committee for a period of two years from the date on which he ought to have taken or made such oath or affirmation."

5. To Section 7 of the said Act, the following words shall be added, namely :—

" and any person so removed shall not be eligible for election or appointment as a member of a committee for a period of five years from the date of his removal."

A m e n d
ment
Section 7 of
the Punjab
Small Town
Act, 1921.

6. In clause (c) of Section 15 of the said Act, the words " as the case may be " shall be omitted.

A m e n d
ment
Section 15 of
the Punjab
Small Town
Act, 1921.

7. In sub-section (i) of clause (a) of Section 21 of the said Act, for the word " rates " between the word " local " and the word " under " the word " rate " shall be substituted.

A m e n d
ment
Section 21 of
the Punjab
Small Town
Act, 1921.

A m e n d -
ment of
Section 35 of
the Punjab
Small Towns
Act, 1921.

8. In Section 35 of the said Act, —

(i) in clause (a) for the word “ waters ” the word “ water ” shall be substituted,

(ii) after clause (i), the following new clause shall be inserted, namely:—

“(ii) the prevention or removal of any movable or immovable encroachment over any street, drain, sewer or channel and the recovery of the expenses incurred by such prevention or removal or in rectifying any damage caused to the street, drain, sewer or channel by such prevention or removal,”

(iii) in clause (m) after the word ‘ buildings ’, the following words shall be inserted, namely:—

“including the prevention of the erection or re-erection of any building for any reason the committee may deem to be just and sufficient or in pursuance of a general scheme sanctioned by the Commissioner restricting the erection or re-erection of buildings, or any class of buildings,”

(iv) After clause (u), the following new clause shall be inserted, namely:—

“(x) the proper registration of births and deaths”.

A m e n d -
ment of
Section 50 of
the Punjab
Small Towns
Act, 1921.

9. In Section 50 of the said Act, to the opening words shall be prefixed the following words, figures, letter and brackets, namely:—

“ Subject to the provisions of sub-section (7-b) of Section 4 of the Punjab Municipal Act, 1911.”

10. In Section 51 of the said Act,—

A m e n d -
ment of
Section 51 of
the Punjab
Small Towns
Act, 1921.

(i) for clause (a) of sub-section (1) the following clause shall be substituted, namely:—

“ for determining the mode and time of appointment or election of members of Small Town Committees, the term of office, allowances (if any) and the qualifications and disqualifications of such members, and the qualifications and disqualifications of voters and generally for regulating all elections under this Act; ”

(ii) after sub-section (1), the following new sub-section shall be inserted, namely:—

“(2) rules under clause (a) of sub-section (1) may among other matters provide—

- " (i) for the definition of the practices at elections held under the provisions of this Act which are to be deemed to be corrupt;
- " (ii) for investigation of allegations of corrupt practices;
- " (iii) for making void the election of any person proved to the satisfaction of the local Government to have been guilty of a corrupt practice or to have connived at or abetted the commission of a corrupt practice or whose agent has been so proved guilty or the results of whose election has been materially affected by the breach of any law or rule for the time being in force ;
- " (iv) for rendering incapable of office on a Small Town Committee either permanently or for a term of years any persons who may have been proved guilty as aforesaid of a corrupt practice or of conniving at or abetting the same ;
- " (v) for prescribing the authority by which questions relating to the matters referred to in clause (a) of sub-section (1) shall be determined ; and
- " (vi) for authorising courts to take cognisance of the breach of any such rules on the complaint of the Deputy Commissioner or some person authorised in writing by the Deputy Commissioner ;
- " (vii) Sub-section (2) shall be renumbered sub-section (3), and, in that sub-section, as renumbered, for the word, figure, letters and brackets "sub-section (1), (a), (e)" the words, figure, letters and brackets "clauses (a) and (e) of sub-section (1) " shall be substituted.

11. After Section 51 of the said Act, the following new section shall be inserted, namely :—

" 52. The local Government may invest any person or persons authorised by it to hold an inquiry into the conduct of an election or into allegations of corrupt practices or intimidation at an election with all or any of the powers conferred upon Commissioners appointed to hold an inquiry into an election by the provisions of Part II of the Indian Election Offences and Inquiries Act, 1920, and may prescribe the procedure to be followed, and provide for the execution of any order as to costs passed by such person or persons in such inquiry."

Insertion of new Section 52 in the Punjab Small Towns Act, 1921. Powers of the local Government to invest with judicial powers officers appointed to inquire into conduct of elections.

12. The amendment made in the said Act by Section 2 shall have effect as if it had been made on the 7th day of May, 1923.

Retrospective effects.

THE PUNJAB SMALL TOWNS AMENDMENT ACT, 1926

THE PUNJAB ACT, XIV OF 1926.

*[Received the assent of the Governor on the 25th October 1926,
and of the Governor-General on the 24th November 1926
and was published in the Punjab Gazette
of 10th December 1926.]*

An Act to amend the Punjab Small Towns Act, 1921

Preamble.

WHEREAS it is expedient further to amend the Punjab Small Towns Act, 1921, in the manner hereinafter appearing,
IT IS HEREBY ENACTED as follows:—

Short title

1. This Act may be called the Punjab Small Towns (Amendment) Act, 1926.

Amendment of
Section 2 of
the Punjab
Small Towns
Act, 1926.

2. To Section 2 of the Punjab Small Towns Act, 1921 (hereinafter referred to as the said Act) the following clause shall be added, namely:—

“(f) ‘Deputy Commissioner’ includes any officer or officers at any time specially appointed by the local Government to perform in any local area the functions of a Deputy Commissioner under this Act.”

Amendment of
Section 6 of
the Punjab
Small Towns
Act, 1921.

3. To sub-section (6) of Section 6 of the said Act the following proviso shall be added, namely:—

“provided that on completion of the term an outgoing member shall, unless the local Government otherwise directs, continue in office until the election or appointment of his successor is notified.”

Insertion
of a new
Section 6-A
in the Punjab
Small Towns
Act, 1921.

4. After Section 6 of the said Act the following new section shall be inserted, namely:—

“6-A. (1) Any member of committee who may wish to resign may forward his written resignation through the president of the committee to the Deputy Commissioner within whose jurisdiction the small town lies.

Resignation of
members.

“(2) When the acceptance of the resignation by the Commissioner has been communicated to the committee, the member shall be deemed to have vacated his seat.”

Amendment of
Section 17 of
the Punjab
Small Towns
Act, 1921.

5. In sub-section (2) of Section 17 of the said Act, between the words “may be” and the word “deposited” the following words shall be inserted, namely:—

“kept in a Government treasury or sub-treasury at any other place in the district or”.

6. In Section 19 of the said Act:—

(i) to clause (a) the following words shall be added, namely:—

“ not being streets or roads in the charge of the Public Works Department”.

(ii) in clause (b) after the word “ property ” the following words shall be inserted, namely:—

“ not being streets or roads in the charge of the Public Works Department”.

7. In the last sentence of Section 31 of the said Act, after the words “ charges incurred ” the following words shall be inserted, namely:—

“ and any fee leviable for the writ of demand”.

8. To Section 35 of the said Act the following clause shall be added, namely:—

“ (y) the licensing of persons selling or importing for sale milk, butter, ghi, curd, meat, game, fish and poultry.”

9. In sub-section (1) of Section 36 of the said Act, for the words “ shall then submit such general order ” the words “ may make such amendments of the general order as it may deem fit and shall then submit the general order as so amended ” shall be substituted, and to the said sub-section the following words shall be added at the end, namely:—

“ or return it to the committee for further consideration.”

10. The amendments made in the said Act by Section 6 shall have effect as if they had been made on the seventh day of May 1923; provided that this Act shall not in any way operate to extinguish any right lawfully acquired from a town committee after the commencement of the said Act.

Amendment of Section 19 of the Punjab Small Towns Act, 1921.

Amendment of Section 31 of the Punjab Small Towns Act, 1921.

Amendment of Section 25 of the Punjab Small Towns Act, 1921.

Amendment of Section 36 of the Punjab Small Towns Act, 1921.

Retrospective effect.

RULES UNDER SECTION 240 APPLICABLE TO ALL MUNICIPALITIES,

Published by Punjab Government Notification No. 13981, dated 16th July 1918, as amended by Notifications No. 23240, dated 18th December 1918, No. 7782, dated 12th March 1920, No. 19677, dated 26th July 1923 and No. 21199, dated 29th August 1923; No. 27356, dated 21st November 1923, No. 13919, dated 2nd June 1925 and corrected by No. 13998, dated 2nd June 1925 with subsequent amendments.

General principles of administration approved by Government to be observed.

1. Every committee shall observe those general principles of which Government has approved in the several departments of administration.

Channel of correspondence with Government and its officers.

2. Committees shall correspond with the local Government and its officers only through the Deputy Commissioner, who will be guided by departmental rules in conducting such correspondence.

Language in which business to be transacted, proceedings recorded, and notices issued.

3. (1) In the case of the municipal committees of Simla, Dharamsala, Dalhousie and Murree, all business shall be transacted and proceedings recorded in the English language, and all notices shall be issued in both English and Urdu.

(2) In the case of all other municipal committees business may be conducted in English or Urdu, but proceedings shall be recorded in the language in which business is conducted. Notices shall be issued in both English and Urdu unless the Commissioner of the division directs that they shall be issued in Urdu only.

3-A. No member of a committee shall be present at or vote or take any other part in any proceeding of a committee and sub-committee relating to a matter in which he or either of his parents or any other descendant of either of his parents or the husband or wife as may be of any such descendant has direct or indirect pecuniary interest.

Note.—A member of Municipal Committee, who is a candidate for appointment to the post of Executive Officer, is precluded from being present or taking part or voting at a meeting of the committee if and when the question of the appointment of an Executive Officer is being considered.

(Punjab Government Letter No. 12641/L. S. G., dated the 11th April 1932.)

¹3-B. No person, who is either a parent or descendant of a member of a municipal committee, or descendant of any

¹Added by Punjab Government Notification No. 850/L. S. G. Comta., dated the 11th January 1933.

parent of such member, or the husband or wife of such members, or a descendant or a parent of the husband or wife of such member, or a descendant of any such parent last referred to, shall be appointed as an officer or servant of such municipal committee without the previous sanction of the Deputy Commissioner.

¹3-C. No matter shall be included in the agenda for any meeting of committee or sub-committee, nor be discussed at any such meeting, which is not connected with the functions and duties of committee as prescribed by the Punjab Municipal Act, 1911, and it shall be the duty of the president or of the presiding member to disallow inclusion in the agenda and to refuse to permit at a meeting the discussion of any such matter: Provided that the president may, at his discretion, permit an exception to this rule, if the discussion of such matter appears to him to be in the public interests and not in any way likely to impede the administration or to promote or encourage lawlessness, or to cause communal discord or to be for any other reason undesirable.

Matters for inclusion in agenda and discussion at meetings.

4. An abstract of the minutes of each meeting of a committee shall be affixed in some conspicuous spot accessible to the public at the place of meeting of the committee, and a copy of such abstract shall be supplied to the manager of every newspaper which is published within the limits of the district in which the municipality is situated.

Publication of minutes of meeting.

4-A. (1) The oath or affirmation of allegiance prescribed in Section 12-A of the Punjab Municipal Act, 1911, shall be administered by the Deputy Commissioner or any other gazetted officer appointed by him in the case of a newly appointed or newly elected committee and by the chairman of the meeting in other cases.

Oath of affirmation

(2) The administration of the oath or affirmation under clause (1) of this rule shall be recorded as a part of the proceedings in the minutes of the meeting.

Note.—Section 12-A has been deleted and reference must be taken to Section 24 of the Act.

5. In every case in which public notice is to be given by a committee in exercise of a power conferred or in discharge of an obligation imposed by the Punjab Municipal Act, 1911, or by any rule or bye-law made thereunder, such notice shall be published by proclamation, and a copy of such notice shall be affixed in some conspicuous spot accessible to

Publication of public notice.

¹Added by Government Notification No. 7100 (L. S. G. Comts.) dated the 29th February 1932.

the public at the place of meeting of the committee. A copy of such notice shall also be supplied to the manager of every newspaper which is published within the limits of the district in which the municipality is situated.

Publication
of proposals
to impose
taxes or to
make rules
or bye-laws.

6. (1) In every case in which a committee proposes to impose any tax under Section 61 of the Punjab Municipal Act, 1911, or to make bye-laws under any section of the said Act or any rules under any other Act under which a municipal committee is empowered to make rules, it shall give notice of its intention in the manner prescribed for the publication of public notices in rule 5.

(2) When any such proposals are forwarded for sanction or confirmation to the appropriate authority, they shall be accompanied by a statement that the provisions of clause (1) of this rule have been complied with.

Fee for
notice of de-
mand.

7. The fee leviable for a notice of demand served under Section 80 (2) of the Punjab Municipal Act, 1911, as later amended shall be four annas for every notice so issued.

Submission
of annual re-
turns, state-
ments, and
reports

8. (1) Every committee shall as soon as possible after the close of each official year prepare in such forms as may from time to time be prescribed by the local Government such returns as may from time to time be so prescribed with regard to the constitution of the committee and the accounts of its income, expenditure, balances and liabilities or any other matter, together with a report on the working of the committee in such form as may from time to time be so prescribed.

(2) One copy of the returns so prepared shall be submitted direct to Government through the Deputy Commissioner by the 15th day of May in each year and a second copy shall be forwarded through the Deputy Commissioner to the Commissioner.

(3) The annual report on the working of committee shall be submitted to the Deputy Commissioner, together with the copy of the returns forwarded for submission to the Commissioner.

Reward for
the destruc-
tion of
snakes.

9. (1) Reward for the destruction of snakes within municipal limits shall be paid only on the order of the president, a vice-president or the secretary of the committee.

(2) Every committee shall maintain a register of rewards paid for the destruction of snakes in the following form:—

Register of rewards for snakes.

1	2	3	4	5
Number and Description of snakes.	Name, caste, and residence of the payee.	Amount of reward paid	Signature or thumb-mark of the payee.	Initial of officer ordering payment.

9-A. (1) No committee shall pay to any member travelling allowance on account of a journey undertaken on municipal business unless—

Travelling expenses.

(a) in the case of a journey performed within the district in which the municipality is situated or of a journey to a place outside such district, the travelling allowance payable in respect of which does not exceed fifty rupees, the committee has passed a resolution sanctioning the undertaking of such journey, or

(b) in the case of any other journey the previous sanction of Deputy Commissioner has been obtained for such journey to be undertaken.

¹(2) The travelling allowance payable shall not exceed the amount that would have been payable in respect of the journey had such a member been a Government servant in Grade III of the grades prescribed by rule 215 of the Punjab Government, Travelling Allowance Rules.

II.—THE MANAGEMENT OF MUNICIPAL PROPERTIES AND OF PROVINCIAL PROPERTIES UNDER THE CONTROL OF MUNICIPAL COMMITTEE.

1. No land, the property of a municipal committee shall be alienated permanently or for a term exceeding ten years except with the previous sanction of the Commissioner of the Division or in exercise of powers specially conferred upon a committee by these rules or any other authority of the local Government.

Alienation of Municipal properties

Note.—Commissioner should not sanction alienation of any land for purposes of building a factory without consulting the Director of Industries, Punjab as to the conditions on which sanction should be accorded.

¹Added by Punjab Government Notification No. 13919, dated 2nd June 1925 and amended by rule XII 10 (4) of the Municipal Account Code.

¹1-A.—Where previous to the passing of the Punjab Municipal (Amendment) Act, 1933, a municipal committee has acknowledged the rights of private owners of property vesting in the committee, whether by agreement or by a resolution not subsequently cancelled, the committee shall not without the previous sanction of the local Government lease, sell or otherwise transfer any such property except in accordance with the terms of the resolution of the agreement as the case may be.

²2. (1) Every municipal committee in charge of *nazul* properties of Government shall maintain a register in form 34 prescribed by rule 183 of the Punjab Municipal Account Code and if the amount of such properties is large shall also maintain a large scale map with index showing the position of such properties.

(2) No municipal committee shall lease *nazul* properties of Government in its charge for a term exceeding five years without the previous sanction of the Deputy Commissioner or for a term exceeding ten years without the previous sanction of the Commissioner.

(3) No municipal committee shall sell *nazul* properties of Government in its charge without the previous sanction of Government. Applications for such sanction should be submitted to Government through Deputy Commissioner and Commissioner in the form appended to this rule, accompanied when necessary by a rough plan. When the sale has been completed the statement should be re-submitted to Government, for confirmation of sale, with the result of the sale detailed on the reverse provided that if the property is sold by auction and the price realized is not less than 75 per cent. of the price accepted by the Government when the proposals for sale were submitted for sanction, the sale may be confirmed by the Commissioner without further reference to Government.

¹Added by Punjab Government Notification No. 30160, dated the 21st November, 1933.

²Amended by Punjab Government Notification 21286, dated 26th July 1926, and as amended by the Municipal Account Code of 1930.

Statement of nazul properties proposed to be sold in the municipality.

Serial No of the property in the nazul register	Description, details and situation of the property and how and when it became nazul	Present income, if any, from the property	Estimated present value of the property.	Reasons for which sale is proposed	Special conditions, if any, of the sale.	Remarks and reserve price proposed by Deputy Commissioner	Remarks and reserve price proposed by Commissioner.	Orders of Government.

(REVERSE)

Statement of sale of nazul property forwarded for confirmation by the Local Government •

Serial No. of the property in the nazul register	Name of property (to correspond with the name given in column 2 on the reverse)	Hour, date and place of sale and name of officer who conducted the sale	Name of bidders	Amounts of bids.	Remarks of the Deputy Commissioner	Remarks or order of the Commissioner	Orders of Government

(Orders of the Local Government.)

1. "Nazul land" means Government land situated within a municipal area. Land vested in, or in possession of a municipal committee must therefore be either (a) *Nazul* or (b) acquired by purchase. The presumption is that the land is *Nazul* unless it can be shown that it has been acquired by purchase.

(Punjab Government Finance Department letter No. 10712/L. S. G. dated the 5th April, 1927.)

2. (1) "*Nazul*" includes (*inter alia*) any immovable property belonging to Government within the limits of a municipality or notified area and not definitely assigned to the charge of a Department other than the Revenue Department:

Provided that—

- (i) The definition will not apply to lands in new colony towns, that is to say, to lands in any place which had not been constituted a municipality or notified area before the colony was started.

(ii) Nor will it apply to lands comprised in any extension (made subsequent to a colony being started) of the limits of existing municipalities and notified areas in colony tracts.

(iii) Nor will it apply to any unalienated lands in towns of the older colonies, unless such lands were situated within the limits of a municipality or notified area prior to the commencement of colonization operations.

(2). The sale-proceeds of *Nazul* lands will be credited to Government and classified under the head "XXXV—Miscellaneous—Extraordinary items" and will be wholly Imperial or wholly Provincial according as they are in excess of Rs. 10,000 or otherwise.

(Punjab Government, letter No. 6066-(Finl.), dated the 22nd March 1917.)

(3). The local Government has issued the following instructions in regard to the principles which local officers should observe in making recommendations regarding the action of Government in cases of encroachments on *Nazul* land vested in local bodies. The instructions distinguish between encroachments of more than 30 and less than 30 years respectively since the legal position of the Government is different in the two cases.

(a) In the case of encroachments which date back more than 30 years and less than 60 years, Government has liberty of action.

(i) In cases where the land encroached upon should clearly be restored to its original purpose, and Government can make no other use of it, Government should lodge a civil suit provided that the local body agrees in writing to pay to Government the cost of litigation whether the suit be successful or not. If the local body declines to give an undertaking to this effect, no action need be taken.

(ii) In cases where it is not necessary to restore the land to its original use, the action of Government will be determined by expediency and its own interest. If a compromise cannot be reached with the encroacher, either for purchase or lease of the land encroached upon, the civil suit should be lodged: provided that a suit is likely to be successful and that the value of the land is sufficient to compensate for the trouble and odium involved. The cost of the suit will be paid by Government and the sale-proceeds or the income of the land will be credited to Government.

(b) In the case of encroachments which date back less than 30 years Government should take direct action only after the reasonable opportunity has been given to the local body to take action. When an encroachment is discovered, the local body should be given full information in regard to it and should be asked to state within a specified time which ordinarily should not exceed six months, firstly whether it considers it necessary that the land encroached upon

should be restored to the former use so that it may continue to vest in the local body, and secondly if it so considers, whether it is prepared to lodge a civil suit against the encroacher within a specified time which should ordinarily not exceed 12 months. At the same time the local body should be informed that if it does not desire the restoration of the property to its former use or if it is not prepared to lodge a civil suit for the purpose within the time specified, Government as owner of the land will regard itself as free to take such action as it may consider proper.

(c) If the reply of the local body is to the effect that it does not consider it necessary to restore the land encroached upon, to its former use, the action of Government will be determined by the considerations mentioned in sub-para (a) (ii) of this paragraph. If a civil suit is lodged the Government will make the local body a *pro-forma* party, but the Government will need the cost of litigation and will take the benefit consequent on a successful issue.

(d) If the local body refuses or fails to lodge a civil suit within the period specified then the action of Government will be determined by the same considerations as are indicated above; but it will not except in special cases be prepared to take action where the land encroached upon should be restored to its original purpose.

[Punjab Government Finance Department letter No. 10712/L. S. G. (Land Administration) dated 5th April 1927.]

Note.—These instructions can only apply when the land encroached upon is a part of a street. In the case of encroachments on *Nazul* lands other than "streets" limitation for its removal is 12 years so far as rights of committees are concerned and not 30 years as seems to have been assumed.

3. Every committee incharge of a staging bungalow shall be bound to observe the rules with regard to staging bungalows laid down in Punjab Government Consolidated Circular No. 28, paragraphs 15 and 16, and no committee shall charge any traveller a fee in excess of the scale permitted by paragraph 17 and rule 25 of paragraph 16 of the said circular.

Managem
ent of stag
bungalows

4. (1) Every committee to which any property of Government has been transferred for management, shall keep a *pro forma* account of the income derived from such property including any grant received from the Government in respect thereof and of the expenditure thereon, and shall be responsible for the annual repairs required for such property and for special repairs to the amount of the balance, if any, of income over expenditure since the property was transferred as shown in the *pro forma* account.

Provin
property
transfe
for man
ment.

(2) No committee to whom any property of Government has been transferred for management shall cause any repairs

or alterations to such property to be carried out in a style differing from that of the original work without the consent of the local Government in the Public Works Department.

¹(3) No committee in whom any land of Government vests or to whom any land of Government has been transferred for management shall cause or suffer any buildings of a permanent nature to be constructed on such land, or shall cause or suffer such land to be diverted permanently from its existing use without the consent of the local Government.

Orders of the Local Government.

The planting of gardens on Government lands on which such gardens did not exist when the lands were made over to local body, amounts to permanent diversion from the existing use, and therefore the consent of Government to such diversion is necessary. (Punjab Government letter 573/L. S. G. dated 6th January 1932.)

²PART III.

Short title
and com-
mencement.

1. (i) These rules may be called the Municipal Work Rules, ³1925.

(ii) They shall come into force on the 6th day of March 1925.

Definitions.

2. In these rules, unless a different intention appears from the subject or context, the expression—

(a) "The Act" means the Punjab Municipal Act, 1911.

(b) "Sanitary Board" means the Sanitary Board for the Punjab for the time being constituted under the orders of local Government.

(c) "Sanitary Engineer" means the Engineer appointed by the local Government to the Sanitary Board, and includes an Engineer for the time being discharging the duties of that office.

(d) "Sanitary projects" and "Sanitary works" respectively, include all projects and works—

(i) connected with the collection, storage, protection, supply, distribution and regulation of water for drinking and flushing;

¹ Added by P. G. Notification No. 30031, dated 23rd November 1927.

²Substituted by P.G. Notification No. 5690, dated 4th March 1925 as corrected by P. G. Notification No. 11900, dated 6th May 1925.

³Added by P. G. Notification No. 12159, dated 19th April 1927.

- (ii) connected with drainage, sewerage or the utilization of sewerage;
- (iii) connected with the regulation of the sanitation of streets, slaughter-houses, markets, lodging houses *serais*, bathing ghats and other public places; or
- (iv) subsidiary to or connected with or relating to the construction and maintenance of water and flood and drainage channels and sewers and street gutters;
- (e) "Administrative approval" means a pronouncement by the authority empowered by these rules that a projected work is suitable and desirable.
- (f) "Technical sanction" means the sanction of the authority empowered by these rules to the detailed plans and estimates of a projected work.
- (g) "Electricity Board" means the Punjab Electricity Board appointed by the local Government by resolution No. 1566-G., dated the 6th May 1922, or for the time being constituted under the orders of the local Government.
- (h) "Electrical Engineer" means an engineer appointed by the local Government to discharge the duties of Electrical Engineer and Electric Inspector under its authority.
- (i) "Electrical works" and "Electrical projects" include all works and projects for the generation, distribution or utilization of electrical energy for any purpose except the transmission of a message.

3. For the purposes of these rules every committee shall be deemed to belong to the class notified under sub-section (6) of Section 4 of the Act: provided that for the purpose of the grant of technical sanction the local Government shall have power after consulting the Committee to reduce a first class Municipal Committee to the second class in the event of its entertaining an inadequate engineering staff.

Classifica-
tion of Com-
mittees

4. (i) No original work shall be undertaken by a first class committee if it involves an expenditure of Rs. 30,000 or more, or by a second class Committee if it involves an expenditure of Rs. 15,000 or more without the administrative approval of higher authority.

Limitation
of Commit-
tee's power
of adminis-
trative ap-
proval.

(ii) If the proposed expenditure exceeds Rs. 50,000 in the case of a sanitary work the administrative approval of the Sanitary Board and in the case of other works that of Government in the Local Self-Government Department shall be obtained. If the proposed expenditure is Rs. 50,000 or less the higher authority whose administrative approval is required under sub-rule (i) shall be the Commissioner."

(iii) Before according such administrative approval the authority concerned shall satisfy itself by a reference to Government in the Local Self-Government Department or otherwise, that—

(a) funds for the execution of the work are likely to be forthcoming within the next two years, and

(b) funds to an amount approved by the authority according technical sanction are likely to be forthcoming annually for maintenance after completion of the work.

5. (i) In cases other than those provided for by rules 4 and 9 no original work shall be undertaken by a committee until administrative approval has been accorded to the work by formal resolution of the Committee.

(ii) No committee shall accord administrative approval to an original work unless such rough estimates and plans have been submitted to it as may be required by the authority whose technical sanction to the work is necessary under these rules.

(iii) Before according such administrative approval the Committee shall satisfy itself that—

(a) funds for the execution of the work are likely to be forthcoming within the next two years, and

(b) funds to an amount approved by the authority according technical sanction are likely to be forthcoming for annual maintenance after completion of the work.

Limitation
on powers of
technical
sanction

1 "6. (1) No original work shall be undertaken by a first class committee if it involves an expenditure of five thousand rupees or more or by a second class committee if it involves an expenditure of two thousand five hundred rupees or more, unless the technical sanction of the competent authority is obtained."

¹ Substituted by Punjab Government Notification No. 12159, dated 19th April 1927.

ent authority has previously been obtained as provided in sub-rule (2).

(2) The authority competent to grant technical sanction for an original work shall be:—

(a) in the case of an electrical work, the Electrical Engineer to the Punjab Government;

(b) in the case of a sanitary work:—

(i) the Sanitary Engineer to Government, Punjab, if the expenditure involved is five thousand rupees or more; or

(ii) the Executive Sanitary Engineer, if the expenditure involved is less than five thousand rupees;

(c) in the case of any other work —

(i) the Superintending Engineer, Public Works Department, Buildings and Roads Branch, if the expenditure involved is five thousand rupees or more; or

(ii) the Executive Engineer, Public Works Department, Buildings and Roads Branch, if the expenditure involved is less than five thousand rupees;

Provided that if Government standard plans and rates approved by the Executive Engineer are adopted by the Committee for any work other than an electrical or sanitary work it shall not be necessary to obtain technical sanction for such work;

Provided further that no officer of the Public Works Department shall accord technical sanction for any work of which the estimated cost is in excess of the cost of a work for which he is empowered to give technical sanction under the rules of that department, without the previous approval of the higher authority empowered to give technical sanction under those rules.

(3) The Committee shall be bound during the execution of a work falling under sub-rule (1) or sub-rule (2) of this rule, to give effect to all modifications and to conform to all conditions imposed by the sanctioning authority with regard to such work.

(4) The local Government may, in the case of any Committee, on such conditions as it may deem fit to prescribe and for a period not exceeding three years, raise by notification the limits of expenditure prescribed in clauses (1) and (2) of this rule.

Revised administrative approval.

7. If the detailed estimates of any project, when prepared exceed the amount administratively approved by 10 per cent. or more, or if it becomes apparent during the execution of any work that the amount administratively approved will be exceeded by 10 per cent. or more owing to increase of rates or other causes the revised administrative approval of the competent authority to the increased expenditure shall be obtained without delay. Similarly revised administrative approval shall be obtained to important modifications of the proposal originally approved, even though the cost thereof may be covered by savings on other items.

Saving.

8. If the local Government, the Sanitary Board, the Electricity Board or any other Board or authority established by the local Government is to contribute any portion of the cost of work, administrative approval and technical sanction shall be accorded by such authority as the local Government or the authority concerned may appoint in this behalf, anything to the contrary in these rules notwithstanding.

(Note.— See Punjab Government Notification No. 29736, dated 24th October 1928.)

9. In cases other than those provided for in rules 6 and 8 no original work shall be undertaken by a committee without the technical sanction of the Municipal Engineer, or, if there is no Municipal Engineer, of such person as the Commissioner may appoint in this behalf.

9-A. No committee shall enter into any agreement with any Electric Supply Company for the purchase of electrical energy or for the supply of any material or the maintenance of any works for the purpose of or relating to the supply of such energy, unless the terms on which such energy or such material is to be supplied or such works are to be maintained by such company have been approved by the local Government; and every application for such approval shall be forwarded to the local Government through the Deputy Commissioner, the Commissioner and the Electrical Engineer.

Grants-in-aid

10. (i) Every application from a committee for a grant-in-aid for an original work shall be submitted with a copy of the order of administrative approval or with an application for administrative approval as the case may be through the Commissioner (a) to the Sanitary or Electricity Board for sanitary or electrical works, and (b) to the local Government for other works.

¹Added by Punjab Government Notification No. 16049, dated 31st May 1927.

(ii) No such grant-in-aid shall be credited to the municipal fund until the prescribed administrative approval and technical sanction is accorded to the work for which the grant-in-aid is sought: provided that the Sanitary Board may credit a grant-in-aid in advance of technical sanction if for any special reason it deems it advisable to begin the work on the rough project.

(iii) The committee shall not permit a work for which a grant-in-aid has been promised or given to be started without the previous sanction of the authority which has promised or given such grant-in-aid.

11. No person shall be appointed by a committee as its Municipal Engineer if he does not possess at least the following technical qualifications:—

Qualifica-
tion of
Municipal
Engineer.

(a) In the case of a first class Committee such qualifications as are prescribed by the local Government for the recruitment of officers to the Provincial Engineering Service and in addition 10 years' professional standing;

(b) In the case of a second class Committee such qualifications as are required for the Punjab Subordinate Engineering Service, and in addition a three years' professional standing: provided that a first class Committee with the previous sanction of the local Government and a second class Committee with the previous sanction of the Commissioner, may, subject to such conditions as may be prescribed, appoint an engineer who does not possess these qualifications:

¹Provided that nothing contained in this rule shall apply to the temporary appointment as municipal engineer of any person for a period or periods not exceeding in the aggregate three months.

12. No person shall be appointed by a Committee to any office connected with sanitary or other works, other than the office of Municipal Engineer the proper discharge of which requires the exercise of professional skill if he does not possess such qualifications as the local Government may from time to time by general or special order prescribe.

Qualifi-
cation of ot
Engineerin
Staff.

13. (1) Preliminary surveys, plans, specifications and estimates for works shall ordinarily be prepared by the Municipal Engineer.

Preparati
on of preli-
nary plans
&c.

(2) When a Municipal Committee resolves not to employ its own permanent agency for the preparation of the preli-

¹Added by Punjab Government Notification No. 34900, dated 27th November 1928.

Preparation
of detailed
plans and
execution of
works.

minary surveys, plans, specifications and estimates for any project which requires the administrative approval of higher authority under these rules, it shall apply to that authority for the necessary professional staff to prepare all preliminary surveys, plans, specifications and estimates.

14. (1) If technical sanction to a project is within the powers of the Municipal Engineer, he shall be deemed competent to prepare the detailed surveys, plans, specifications and estimates and execute the work.

(2) If the technical sanction of higher authority is required the Municipal Committee may resolve to work through its own engineering staff and shall in that case obtain a written certificate from the Sanitary Engineer in the case of sanitary works, from the Electrical Engineer in the case of electrical works and from the Superintending Engineer in the case of other works to the effect that the said staff is competent to prepare the detailed plans, specifications, surveys and estimates and to execute the work.

(3) If the certificate required under sub-rule (2) of this rule is not given, the Municipal Committee shall have the said surveys, plans, specifications and the estimates carried out by the Sanitary, Electrical or Superintending Engineers as the case may be, or by some person or persons nominated by them and it shall not employ any other agency without their previous consent in writing.

15. The Committee shall pay to Government on account of services rendered by officers of the Public Works Department including the Sanitary Engineer but excluding the Electrical Engineer for whose services the scale of fees payable was notified in Notification No. 820-6/6976, dated the 31st July 1922, and No. 829-6/14216 (Industries), dated 8th May 1923, the fees detailed in the following table, namely:—

¹Amended by Punjab Government Notification 21168, dated 10th August 1927.

Description of work.	If the estimated cost of the work is less than Rs. 10,000.	If the estimated cost of the work is from Rs. 10,000 to Rs. 29,999.	If the estimated cost of the work is Rs. 30,000 or over.
For visiting a site and giving advice preparatory to design.	Travelling allowance according to Government rules plus a fee of Rs. 50 for each day or part of a day.		
For the preparation of preliminary plans and estimates by cubic measurement or otherwise.	$1\frac{1}{4}$ per cent. of the estimated cost.	1 per cent. of the estimated cost.	$\frac{3}{4}$ per cent. of the estimated cost.
For the preparation of general drawing plans,* estimates, elevations, sections and specification	1 per cent. of the estimated cost.	$1\frac{1}{2}$ per cent. of the estimated cost.	$\frac{5}{4}$ per cent. of the estimated cost.
For the preparation of half inch, full size and other detail drawings.	$1\frac{1}{4}$ per cent. of the estimated cost.	1 per cent. of the estimated cost.	$\frac{3}{4}$ per cent. of the estimated cost.
For interviews and correspondence with the Engineer in charge of construction to an extent not amounting to supervision.	$1\frac{1}{4}$ per cent. of the estimated cost.	1 per cent. of the estimated cost.	$\frac{5}{4}$ per cent. of the estimated cost.
For the supervision of construction including periodical inspection to the extent necessary to ensure efficient construction and the issue of all necessary orders regarding the work and the tendering of advice during execution.	3 per cent. of the estimated cost.	3 per cent. of the estimated cost.	2 per cent. of the estimated cost.
For the preparation of plans and estimates and construction through the staff of the Public Works Department.	Full departmental charges.		
†For the* preparation of a plan of the town where none already exists, and such preparation is an essential preliminary to the preparation of the plans and estimate for the work under consideration		Such sum as may be agreed upon in such case before the preparation of the plan is taken in hand.	

*Added by Punjab Government Notification No. 12159, dated 19th April 1927.

†Added by Punjab Government Notification No. 36225, dated 6th December 1930.

16. The committee shall pay to Government on account of services rendered by the Consulting Architect to Government Punjab, the fees detailed in the following table, namely:—

Description of work	If the estimated cost of the work is less than Rs. 10,000,	If the estimated cost of the work is Rs. 10,000 or more, but less than Rs. 30,000.	If the estimated cost of the work is Rs. 30,000 or more.
For visiting a site and giving advice preparatory to design or during execution of work.	Travelling allowance according to Government rules plus a fee of 50 rupees for each day or part of a day.		
For the preparation of preliminary plans and estimates by cubic measurement or otherwise	2½ per cent of the estimated cost.	1½ per cent. of the estimated cost	1¼ per cent. of the estimated cost.
For the preparation of general plans, elevations, sections and specifications.	2½ per cent. of the estimated cost.	1½ per cent. of the estimated cost.	1¼ per cent. of the estimated cost.
For the preparation of half inch, full size and other detailed drawing.	2½ per cent. of the estimated cost	1½ per cent. of the estimated cost.	1¼ per cent. of the estimated cost
For correspondence and interviews with the Engineer in charge of construction to an extent, not amounting to supervision.	2½ per cent of the estimated cost.	1½ per cent. of the estimated cost	1¼ per cent of the estimated cost.

IV—PUBLIC INSTRUCTION.

1. Every Committee shall be bound by the rules contained in the Punjab Education Code for the time being in force so far as they apply to local bodies.

¹Added by Punjab Government Notification 21168, dated 10th August 1927 and corrected by Notification No. 36836, dated 13th December 1930.

**General Election Rules applicable to Municipalities in:
the Punjab, vide Notification No. 18030 of 28th
May 1930, as subsequently amended.**

RULES.

PART I.

1. (1) These rules may be called the Municipal Election Rules, 1930. Short title.

(2) They shall come into force on the first day of October, 1930.

2. In these rules unless there is anything repugnant in the subject or context — Definition.

- (a) "Constituency" means a class or ward, for the representation of which a member or members is or are to be or has or have been elected under these rules ;
- ¹(aa) "Gazetted Officer" means a Government servant belonging to any all-India specialist or provincial service or any other Government servant holding a post which may have been declared by competent authority to be a gazetted post.
- (b) "Newly constituted committee" means a committee of which the members have been elected at a general election or appointed about the time of a general election, but have not yet taken their seats;
- (c) "Oath of allegiance" means the oath of affirmation of allegiance prescribed by Section 12-A² of the Act;
- (d) "Roll" means the roll of persons entitled to vote at an election under these rules;
- (e) "The Act" means the Punjab Municipal Act, 1911;
- ¹(f) "Treasury" means a Government Treasury or Sub-Treasury or a Bank to which the Government Treasury business has been made over.

3. A general election shall, unless the local Government otherwise directs, be held for all seats on a committee that are to be filled by election on such date or dates as the Deputy Commissioner may determine, and notice of the date

General elections to be held on dates fixed by the Deputy Commissioner.

¹ Added *vide* Punjab Government Notification No 34368, dated 1st November, 1932.

² Should be read as Section 24.

or dates so determined shall be published not less than six weeks before such date or the first of such dates by being posted at the office of the Deputy Commissioner and at the office of the municipal committee and at such other places as the Deputy Commissioner may direct:

Provided that in the case of the committees of Simla, Murree, Dalhousie and Dharmasala such dates shall not be earlier than the fifteenth day of May or later than the thirtieth day of September;

Provided further that the local Government may at any time not less than ten days before the first of the dates so determined direct that the elections shall be postponed to such other date or dates as may be prescribed not more than thirty days later than the date or dates originally determined, and no proceedings taken prior to the date of such direction shall be invalid merely on account of such postponement.

¹ 3-A. If on the application of any party to an election petition local Government is satisfied that there are reasonable grounds for the transfer of a case from the court of the commission appointed to hear the election petitions, it may make a fresh appointment as provided by sub-rule (2) above.

Note.—This rule ought to follow rule 82 and the reference to sub-rule (2) seems to refer to sub-rule of rule 82.

Term of
office of
members

4. Subject to the provisions of the Act, the term of office of a member of a committee shall be three years from the date of taking his seat or until the date of the meeting appointed under the provisions of rule 5 for the administration of the oath of allegiance to members of a newly constituted committee, whichever period is less.

Administra-
tion of oath
of allegiance

² 5. (1) The Deputy Commissioner or any other Gazetted Officer appointed by him in this behalf, shall, as soon as possible, after the notification of the appointment and election of members of such committee fix at 48 hours notice a date for the first meeting of the newly constituted committee, stating in such notice, that at such meeting, the oath of allegiance will be administered to the members present and that the President and the Vice-President or the Vice-Presidents will be elected, the aforementioned officer presiding over such meeting until after the election of the President and Vice-President; and such meeting shall be deemed to be validly convened meeting of the committee notwithstanding anything contained

¹ Added by Punjab Government Notification No. 7566, dated 15th March 1933 reference to sub-rule appears to be wrong or the rule is misplaced and ought to follow rule 82.

² Amended by Notification No. 34268, 1st November 1932,

in any bye-laws made under provisions of Section 31 of the Act and the administration of the oath of allegiance and the election of the President or Vice-Presidents shall be recorded as part of the proceedings in the minutes of the meeting.

Amended by Notification No. 34368, dated 1st November 1932.

(2) The oath of allegiance shall be administered to any member of a newly constituted committee who was not present at the meeting convened under the provisions of sub-rule (1) or to a member elected or appointed to fill a casual vacancy by the chairman of the meeting at which such member appears to take such oath.

¹ (3) The Deputy Commissioner may, in the absence or illness of both of the President and of the Vice-President or Vice-Presidents or if the offices of the President and Vice-President are vacant convene a meeting of the committee and the members present thereat shall elect a member to be a chairman of the meeting and may transact any business at such meeting of the committee notwithstanding anything contained in any bye-laws made under provisions of Section 31 of the Act.

6. No person shall be entitled to be entered as a voter on any roll unless he—

Qualifications of voters.

(a) is a male British subject or a male natural born subject of a State in India and had on the first day of the month in which the roll is published under the provisions of the sub-rule (1) of the rule 8 attained the age of 21 years; and provided that if at a special meeting of the committee of which the electorate is communal resolves that the franchise shall be extended to women, the local Government shall issue a notification to the effect that the word "male" shall be omitted from this clause in respect of the election of members of that committee;

(b) has not been adjudged by a competent court to be of unsound mind; and

(c) had in the case of municipalities other than those of Dalhousie, Dharmasala, Murree and Simla ordinarily resided or carried on business within the municipality for the twelve months preceding the first day of the month in which the roll is published under the provisions of sub-rule (1) of rule 8; and

¹ Amended by Notification No. 34268, dated 1st November, 1932.

- (d) is otherwise eligible under the special rules applicable to the Municipal Committee for which the roll is being prepared.

Disqualifi-
cations for
membership.

7. (1) Except with the sanction of the local Government which may be granted in respect of any person or class of persons, no person other than a British subject or a natural born subject of a State in India shall be eligible for election as a member of a municipal committee.

(2) No person shall be eligible for election as a member of a municipal committee who—

- (a) is not entered as a voter on a roll of a constituency in the municipality; or
- (b) is under contract as regards work to be done for, or goods to be supplied to, the municipal committee; or
- (c) receives any remuneration out of the municipal fund for services rendered to the municipal committee; or
- (d) has, within five years from the date fixed for the nomination of candidates under the provisions of rule 15, been proscribed from Government employment; or
- (e) has, at any time within five years from the date fixed for the nomination of candidates under the provisions of rule 15, been serving a sentence of imprisonment for a period exceeding one year; or
- (f) is an undischarged insolvent or being a discharged insolvent has not obtained from the court a certificate that his insolvency was caused by misfortune without any misconduct on his part; or
- (g) is a whole-time salaried Government official; or
- (h) cannot, or if he is blind, could not before he became blind, read and write, Urdu, English, Hindi (in Devanagiri script) or Punjabi (in Persian or Gurmukhi script):

Provided that the local Government may, in cases, not covered by Section 13 of the India Electoral Offences and Inquiries Act, 1920, exempt any person or class of persons from the disqualification contained in clause (b), (c), (d), (e) or (f), of this sub rule;

¹ Provided further that nothing contained in clause (c) shall debar a person who receives as president, salary sanc-

¹ Added, amended and substituted by Notification No. 34368, dated 1st November, 1932.

tioned by the local Government under Section 53 of the Act from standing for election or re-election as the member of the committee.

¹ *Explanation.*—For the purposes of this sub-rule, a copyist who receives some Government fees of which the amount varies from month to month and a public prosecutor are not whole time salaried Government officials.

¹8. (1) The Deputy Commissioner shall cause a roll for each constituency of a municipality to be prepared in form 1 and published at a convenient time not more than one hundred and twenty days before the date or the first of the dates fixed or to be fixed under the provisions of rule 3 for a general election, together with a notice intimating the date not less than twenty-one days from the date of the notice by which objections or claims with regard to the rolls may be presented and the Revising Authority or Authorities to whom they may be presented.

Preparation
of prelimi
nary rolls.

(2) The name of voters on the rolls shall be arranged in alphabetical order and numbered serially by constituencies.

(3) Notwithstanding any thing contained in these rules or in any special rules applicable to any individual municipal committee, no persons shall be entitled to vote in respect of more than one alternative qualification, or to give more than one vote, and no person shall be recorded as a voter in more than one electoral roll.

(4) The name of every person who is entitled to be registered as a voter on a roll shall in the first instance be entered on the roll of the constituency in which he resided, provided that if such person so desires his name shall be entered on the roll of the constituency, if any, wherefrom he derives any part of his qualifications.

(5) For the purposes of rule 6 and this rule a person may be presumed to reside in a constituency if he owns a residential house or a share in the residential house in the constituency; provided that the house has during the twelve months preceding the date of which the roll is published under the provisions of sub-rule (1) not been let on rent either in whole or in part.

(6) Copies of the rolls and the notice shall be posted at the office of the Deputy Commissioner and at the office of the committee and at such other places as the Deputy Commissioner may determine and the copy shall be made available for sale at a price to be fixed by the Deputy Commissioner

¹ As amended by Notification No. 34368, dated 1st November 1932.

and the proceeds of such a sale shall be credited to, Municipal Fund.

Appointment
of Revising
Authorities.

¹9. The Deputy Commissioner may appoint any Gazetted officer of Government to be a revising authority for the purpose of hearing claims or objections relating to Rolls and may specify the constituency or constituencies for which he shall be the revising authority.

Presentation
of claims and
objections

10. (1) When a roll has been published under the provisions of rule 8, claims and objections relating to the inclusion of names in, or their exclusion from, the roll may be presented to the appropriate Revising Authority named in the notice published with the roll by four o'clock of the afternoon of the date specified in such notice provided that—

(a) a claim shall not relate to more than one person, shall be in writing, shall be verified by the claimant and shall be presented by him or by a duly authorized agent appointed by authority in writing signed by the claimant and verified by such agent and, if such agent is not a legal practitioner, by a magistrate, sub-registrar of the registration department, zaildar, lambardar or member of a local authority; and

¹(b) an objection shall not be made except by a person whose name is on a roll of the municipality, shall not relate to more than one person, shall be in writing, shall be verified by the objector, shall be accompanied by a duplicate copy for service on the person to whom objection is taken and shall be presented by him personally or by an agent duly authorized in the manner prescribed in clause (a) together with a copy thereof.

(2) If a claim or objection is presented by an agent the Revising Authority shall not receive it unless such agent has certified in writing that such claim or objection was signed by the claimant or objector in his presence, and that the person who so signed it is the person whom he represents himself to be in such claim or objection.

(3) Any person whose name is entered on the roll of a constituency may by means of a claim apply to have his name transferred to the roll of another constituency if he owns a building or carries on business in such other consti-

¹ Amended by Notification No. 34368, dated 1st November 1932.

tuency, and such claim shall be presented to the Revising Authority for such other constituency.

(4) The Revising Authority shall maintain a Register of Claims in form II and a Register of Objections in form III in which he shall cause to be entered at the time of its receipt particulars of every claim or objection, as the case may be, received.

Note.—No stamp is necessary on a petition relating to claims and objections.

Orders of local Government.

Note.—The local Government has ruled that under rule 10 (1) (a) of the Municipal Elections Rules 1930, the verification of a claim by an Agent who is not a legal practitioner is necessary in addition to that by a Magistrate or Sub-Registrar. (Punjab Government letter No. 21877/L.S.G.C., dated 22nd August 1933.)

11. When a Revising Authority receives an objection presented under the provisions of rule 10, he shall cause one copy of it to be served on the person to whom objection is taken, provided that if an objection or claim is presented by a person from whom he is not authorized to receive it under the provisions of rule 9, he shall return it to the person presenting it for presentation to the appropriate Revising Authority; and when the period prescribed for the presentation of claims and objections has expired, he shall forthwith post at his office a list of all claims and objections received together with a notice showing the dates on which and the place at which such claims and objections will be heard, provided that in no case shall a date be fixed less than seven days or more than twenty-eight days from the date on which such list was posted.

Posting of
list of claim
and objec-
tions.

12. (1)¹ On the date and at the place fixed under the provisions of rule 11, the Revising Authority shall call up the claims or objections in the order in which they are entered in the list posted under the provisions of the said rule, shall dismiss any case in which the claimant or objector is not present or is not represented, and after hearing the parties concerned or their authorized agents and, in the case of a claim, any person who objects to the admission of such claim, and such evidence as may be produced and may to him appear necessary, shall reject any claim or objection which does not comply with the provisions of clause (a) or clause (b) of proviso of sub-rule (1) of rule 10 or was received after four o'clock of the afternoon of the date specified in

Disposal of
claims and
objections

¹ Amended by Notification No. 34368, dated the 1st November 1932,

the notice published under the provisions of sub-rule (1) of rule 8 and shall pass such orders in any other case as he may deem fit.

¹ (2) No appeal shall lie from the order of a Revising Authority passed under provisions of sub-rule (1), but any person aggrieved may within three days from the date of such order apply to the Deputy Commissioner for revision of the orders and the Deputy Commissioner may confirm such order or set aside and pass such other orders with respect to the claim or objection as he may deem fit and such orders of the Deputy Commissioner shall be final.

(3) Every order passed by a Revising Authority under sub-rule (1) and not set aside under sub-rule (2) and every order passed by the Deputy Commissioner under sub-rule (2) shall be final and shall not be called in question either by a Commission appointed under Part VI of these rules or by any court.

13. (1) A Revising Authority, as soon as he has disposed of all claims and objections presented to him and in any case not later than thirty days from the date by which under the provisions of sub-rule (1) of rule 8 claims and objections must be presented, shall forward a list of such claims and objections and of his orders accepting or rejecting them to the Deputy Commissioner, who shall cause the roll to be corrected accordingly and shall then either reprint and republish the roll so corrected, or if he deems fit, shall republish the preliminary roll published under the provisions of sub rule (1) of rule 8, together with a list of additions and corrections: provided that in any case copies duly corrected shall be made available for sale as soon as may be after republication has been made.

(2) Any roll republished under the provisions of sub-rule (1) with or without a list of additions and corrections, as the case may be, shall come into force from the date of such republication and shall continue in force until a fresh roll is prepared and republished under the provisions of sub-rule (1) for the purposes of the next general election of members: provided that the local Government may by notification direct the preparation in accordance with these rules of a fresh roll at any time.

14. (1) Any person whose name is on the roll of a constituency may at any time bring to the notice of the Deputy Commissioner by application in writing in any form any error in the entry in the roll relating to his name which is a

Final publication
of electoral roll.

Correction
of clerical
errors, etc.
in rolls.

¹ Substituted by Notification No. 34368, dated the 1st November 1932.

clerical error and the Deputy Commissioner may at any time make or cause to be made such correction in the roll as he may deem necessary in respect of such entry.

(2) Any person whose name was entered on a roll published under the provisions of sub-rule (1) of rule 8 may if his name is omitted from the roll republished under the provisions of sub-rule (1) of rule 13 and no order for such omission has been passed under the provisions of rule 12, apply to the Deputy Commissioner for the restoration of his name to such roll and the Deputy Commissioner shall cause his name to be restored accordingly.

Note.—Under the Court Fees Act, 1870, it is not necessary to affix a stamp on an application presented under this rule.

15. The Deputy Commissioner shall, by notice posted at his office and at the office of the committee, fix a date for the nomination of candidates for election, not less than twenty days before the date fixed for the election, and not less than fifteen days after the publication of the notice and not less than seven days after the republication of the roll under the provisions of sub-rule (1) of rule 13, and a date not more than seven days after the date fixed for the nomination of candidates for the scrutiny of nominations.

Dates to be fixed for nomination of candidates and scrutiny of nominations.

16. (1) Any person not ineligible for membership of the committee under the provisions of rule 7 or of any other rules or of the Act or of any other Act may be nominated as a candidate for election, provided that on or before the date fixed for the nomination of candidates under the provisions of rule 15, between the hours of eleven o'clock of the forenoon and three o'clock of the afternoon he shall either in person or by his proposer and seconder together or by a duly authorized agent appointed by authority in writing signed by him and, unless such agent is a legal practitioner verified by a magistrate, sub-registrar of the registration department, zaildar, lambardar or member of a local authority, deliver to the Deputy Commissioner or to an Assistant Commissioner or Extra Assistant Commissioner appointed by the Deputy Commissioner in this behalf, or, if the Deputy Commissioner is absent from the headquarters of the district and has made no such appointment, to any magistrate of the first class at such headquarters a nomination paper completed in form IV appended to these rules and subscribed by the candidate himself as assenting to the nomination and by two persons, as proposer and seconder whose names are included in the roll of the constituency concerned republished under the provisions of sub-rule (1) of rule 13.

Nomination of candidates.

(2) No person shall subscribe as proposer or seconder a number of nomination papers, greater than the number of members to be elected to represent the constituency in question, and if a person has subscribed, whether as a proposer or seconder a larger number of nomination papers, than there are vacancies to be filled, only those of the papers so subscribed which have been first received up to the number of such vacancies shall be deemed to be valid.

(3) If any person is nominated as a candidate in more than one constituency he shall, not later than the day succeeding the date on which the scrutiny of nominations of candidates under the provisions of rule 15 is concluded, intimate in writing to the Deputy Commissioner the constituency for which he wishes to stand, and his nomination for any other constituency shall thereupon be deemed to be cancelled: provided that if he fails to make such intimation, the Deputy Commissioner shall cancel his nomination in respect of all such constituencies except one as he may deem fit.

Deposit to
be made by
candidates.

17. (1) Each candidate nominated under the provisions of rule 16 shall at or before the time of the delivery of his nomination paper deposit or cause to be deposited with the Deputy Commissioner or other officer to whom the nomination paper has been delivered under the provisions of sub-rule (1) of rule 16, or in the treasury or a sub-treasury the sum of three hundred rupees if he is a candidate for election in a municipality specified in the Schedule to these rules or of one hundred and fifty rupees if he is a candidate for election in any other municipality, in cash or in Government Promissory Notes of equal value at the market rate of the day; and the nomination paper of a candidate shall not be deemed to have been duly presented unless such deposit has been made, provided that no more than one such deposit need be made by any candidate in respect of his candidature for any one constituency.

(2) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made withdraws his candidature within the time specified in rule 18, or if the nomination of any such candidate is refused, the deposit shall be returned to the person by whom it was made, and if any candidate dies before the commencement of the poll, any such deposit, if made by him, shall be returned to his legal representative or, if not made by the candidate, shall be returned to the person by whom it was made.

(3) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is not elected

and the number of votes polled by him does not exceed one-eighth of the total number of votes polled in the constituency concerned, the deposit shall be forfeited to the local Government.

Explanation.—For the purpose of this sub-rule the number of votes polled shall be deemed to be the number of ballot papers, other than spoilt, tendered or challenged ballot papers, counted.

¹ (4) If a candidate by whom or on whose behalf the deposit referred to in sub-rule (1) has been made is elected or is not elected, the deposit shall, if it is not forfeited under sub-rule (3), be returned to the candidate or to the person who has made the deposit in his behalf, as the case may be, as soon as may be after the publication of the result of the election in the Gazette.

¹ 18. Any candidate may withdraw his candidature by notice in writing subscribed by him and delivered to the Deputy Commissioner or other person authorized by the Deputy Commissioner to receive such notices, before three o'clock of the afternoon of the seventh day succeeding the date fixed under the provisions of rule 15 for the scrutiny of nominations, and no person who has thus withdrawn his candidature shall be allowed to cancel his withdrawal or to be renominated as a candidate for the same election in the same constituency.

Withdrawn
of candida-
ture.

19. The Deputy Commissioner shall, on the second day succeeding the date fixed for the nomination of candidates under the provisions of rule 15 post at his office and at the municipal office lists of all the candidates whose nomination papers have been presented under rule 16, together with descriptions, similar to those contained in the nomination papers, of the candidates and of the persons who have subscribed the nomination papers as proposers or seconders.

List of nom-
inations to b
posted.

20. On the date fixed for the scrutiny of nominations under the provisions of rule 15 the candidates, one proposer and one seconder of each candidate and one other person for each candidate duly authorized in writing by such candidate and no other person may attend at such time and place as the Deputy Commissioner may appoint, and all reasonable facilities shall be given to them for examining the nomination papers of all candidates whose names are included in the list of candidates posted under the provisions of rule 19.

Candidate-
etc., to b
allowed t
examine e-
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¹ Amended by Notification No. 34368, dated 1st November 1932.

Scrutiny of
nominations
and decision
of objections.

21. (1) On the date fixed for the scrutiny of nominations under the provisions of rule 15, after facilities have been given for the examination of nomination papers under the provision of rule 20, an Assistant Commissioner or Extra-Assistant Commissioner appointed by the Deputy Commissioner in this behalf, shall examine the nomination papers of all candidates whose names are included in the list of candidates posted under the provisions of rule 19, and shall decide all objections made to any nomination, and shall either on such objection or on his own motion after such summary enquiry, if any, as he may deem necessary, refuse any nomination if he is satisfied—

- (a) that the candidate was on the date fixed for the nomination of candidates ineligible for election under the provisions of rule 7 or of any other rules or of the Act or of any other Act and had not before that date been exempted by the local Government from any disqualification imposed upon him;
- (b) that a proposer or seconder was not qualified to subscribe the nomination paper under the provisions of rule 16;
- (c) that there has been any failure to comply with any of the provisions of rule 16 or 17;
- (d) that the candidate or any proposer or seconder is not identical with the person whose number on the roll is given in the nomination paper as the number of such candidate, proposer or seconder, as the case may be;
- (e) that the signature of any candidate or of any proposer or seconder is not genuine or has been obtained by force or fraud:

Provided that nothing contained in clause (b), (c), (d) or (e) of his sub-rule shall be deemed to authorize the refusal of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper if the candidate has been duly nominated by means of another nomination paper, in respect of which no irregularity has been committed;

Provided further, that no nomination shall be refused under clause (d) of sub-rule if a summary enquiry is sufficient to establish the identity of the candidate, proposer and seconder with the persons who subscribed the nomination paper as such respectively.

(2) The officer appointed under the provisions of sub-rule (1) for the scrutiny of nomination papers shall endorse on each nomination paper his decision accepting or rejecting it, and if he rejects it, he shall record in writing a brief statement of his reasons for so rejecting it.

(3) A person aggrieved by any order passed by an Assistant Commissioner or Extra Assistant Commissioner under sub-rule (1) or sub-rule (2) may within three days from the date of such order present, in person or by counsel or by a duly authorized agent appointed by authority in writing signed by him and verified by a magistrate, sub-registrar of the registration department, *saidar*, *lambaradar* or member of a local authority, to the Deputy Commissioner an application for revision of such order, provided that if the Deputy Commissioner is himself a member of the committee such application shall be presented to such other officer as the Commissioner may appoint in this behalf.

(4) When any application for revision of an order has been submitted to the Deputy Commissioner or other officer appointed in this behalf under the provisions of sub-rule (3), the Deputy Commissioner or such other officer may, after hearing the applicant or his counsel, confirm such order, or, after sending by registered post notices to the candidates for election from the constituency concerned intimating the date, not less than seven days from the date of the notices, on which such application will be heard, may on such date, after hearing any representation which the applicant and any other such candidate as may appear, may make, confirm such order or may set it aside and pass such other order as he may deem fit.

22. (1) On completion of the scrutiny of nominations and after the expiry of the period within which candidatures may be withdrawn under the provisions of rule 18, the Deputy Commissioner shall forthwith prepare lists of valid nominations and cause them to be posted up at some conspicuous place in his office and at the municipal office.

List of val
nominatio n
to be post.
up

(2) Against each name in the list to be posted under the provisions of sub-rule (1) shall be placed a number of black dots which shall be different in the case of the name of each candidate for election in the same constituency, and at the foot of the list it shall be notified that the same number of dots will appear against the name of each candidate on the ballot papers as appear against his name in the list.

23. If a candidate dies before the poll and after the date fixed for the nomination of candidates and his nomination is or has been accepted as valid by the officer appointed for the

Death of
candidate i
fore the p.

scrutiny of nomination papers, all proceedings with reference to the election of a member in the constituency or constituencies in which he was a candidate other than the preparation of the roll shall be commenced anew in all respects as if for a fresh election: provided that no fresh nomination shall be necessary in the case of a candidate whose name is entered on a list of valid nominations posted under the provisions of rule 22.

Candidates deemed to be elected if their number is equal to or less than the number of vacancies

24. Subject to the provisions of rule 23, if the number of candidates validly nominated in any constituency is equal to or less than the number of members to be elected for such constituency, then such candidates shall be deemed to have been elected and if the number of such candidates is less than the number of members to be elected, the Commissioner shall fix another date for the election of the remaining members, and if the number of candidates validly nominated for such further election is less than the number of members to be elected, the Deputy Commissioner shall report the matter to the local Government with a view to action being taken under clause (b) of Section 14 of the Act.

Poll to be taken if number of candidates is greater than number of vacancies.

25. If the number of candidates validly nominated in any constituency is greater than the number of members to be elected for such constituency, a poll shall be taken on the date or dates fixed for the election.

List of polling-stations to be published, and polling officer to be appointed.

26. (1) The Deputy Commissioner shall select such number of polling stations as he may deem necessary, and shall, not less than seven days before the date or the first date of the dates fixed for the election, post at his office and at the office of the committee a list showing the polling stations so selected, the polling area for which each such station has been selected and the hours, during which each such station shall remain open for the recording of votes, and no persons shall be permitted to record his vote except at the polling station of the area to which according to the roll he belongs and within the period for which the polling station remains open.

(2) The Deputy Commissioner shall appoint a presiding officer and two polling officers for each polling station and such other persons (hereinafter referred to as polling assistants) to assist the presiding officer as he may deem necessary, and if before or at time of the poll the presiding officer or a polling officer or polling assistant refuses to act or becomes incapable of acting as such, the Deputy Commissioner shall appoint another person to act as presiding officer, a polling officer or polling assistant, as the case may be, and the Deputy Commissioner may at any time, if he thinks fit, appoint any other person so to act in place of any person previously appointed;

Provided that in case to which the provisions of sub-rule (2) of rule 33 have been applied by the local Government the Deputy Commissioner may if he thinks fit, appoint only one polling officer.

(3) The presiding officer shall in addition to performing any other duties imposed upon him by these rules, be in general charge of all arrangements at the polling station and may issue orders as to the manner in which persons shall be admitted to the polling station and generally for the preservation of peace and order at or in the vicinity of the polling station

27. (1) Deputy Commissioner shall provide at each polling stations materials sufficient for the purpose of enabling voters to mark the ballot papers, instruments for stamping the official mark on such papers, as many ballot boxes as may be necessary, and copies of the roll or of such part thereof as contains the names of the electors entitled to vote at such station.

Materials
to be supplied
at polling
stations.

(2) The official mark shall be kept secret.

28. Every ballot box shall be marked with the name or number of the polling station at which it is to be used and shall be so constructed that ballot papers can be introduced therein, but cannot be withdrawn without the box being unlocked.

The ballot
box.

29. The presiding officer at a polling station, immediately before the commencement of the poll, shall show the ballot box empty to such persons as may be present at such station so that they may see that it is empty, and shall thereupon forthwith lock it up and place upon it the seal provided for the purpose in such manner as to prevent its being opened without breaking such seal, and shall keep it so locked and sealed, and shall thereafter open the polling station for polling at the hour appointed under the provisions of sub-rule (1) of rule 26.

Procedure
before com-
mencement
of the poll

30. (1) Voting shall be by ballot and every person wishing to record his vote shall do so in person, and not by proxy, by means of a ballot paper in form V on which against the name of each candidate shall be shown the same number of dots as were shown against his name in the list of valid nominations posted under the provisions of rule 22.

Voting to
be in person
and not
by proxy.

(2) No person, after entering a polling station, shall exhibit to any polling *muharrir*, assistant or officer any paper purporting to show the name or description of such person.

Questions
to be put to
electors

31. At any time before a ballot paper is delivered to an elector, the presiding officer or a polling assistant may of his own accord if he has reason to doubt the identity of the elector or his right to vote at the polling station, and shall, if so required by a candidate or his agent, put to the elector the following questions:—

(a) Are you the person enrolled as follows? (*reading the whole entry relating to the elector from the roll*)

(b) Have you already voted at the present election?

(c) Such other questions as he may deem fit or necessary; and the elector shall not be supplied with a ballot paper unless he answers the first question in the affirmative and the second question in the negative or if he refuses to answer any other question put to him in pursuance of this rule.

Procedure
for distrib-
uting ballot
papers.

32. Immediately before he delivers a ballot paper to an elector the presiding officer or a polling assistant shall cause it to be stamped with the official mark and shall call out the number, name and description of the elector as given in the roll and shall cause the roll number of the elector to be entered on the counterfoil of the ballot paper and the signature of the elector, or, if the elector is unable to affix his signature, a rolled impression of his left thumb, to be obtained on such counterfoil, and shall make a mark in a copy of the roll against the number of the elector to denote that he has received his ballot paper but without indicating the particular ballot paper which he is to receive, and shall then hand the ballot paper to the elector.

Method of
recording
vote.

33. (1) When an elector has received a ballot paper he shall forthwith proceed to the place set apart for the marking of ballot papers and shall mark a cross (x) in the square opposite to the name of the candidate for whom he votes, provided that if the elector is illiterate, he may require a polling officer to mark the cross as directed by him and the polling officer shall so mark the cross and after showing it to the other polling officer return the ballot paper to the elector; and when the elector has marked a cross or caused it to be marked, he shall fold up the ballot paper and drop it into the ballot box and forthwith leave the polling station.

(2) In the case of elections to which this sub-rule has been specially applied by the local Government, a polling officer after marking the ballot paper shall show it to such candidates or their agents as may be present.

Government orders under Rule 33.

It is the policy of the Government not to apply sub-rule (2) to any election except in response to the desire of a com-

mittee in a resolution. (Punjab Government letter No. 3387 S. L. S.-G. dated 22nd July, 1933.)

34. If a person representing himself to be a particular elector named on the roll applies for a ballot paper after another person has voted as such elector, the applicant shall, after duly answering such questions as the presiding officer may ask, be entitled to mark a ballot paper in the same manner as any other voter: such ballot paper (hereinafter referred to as a tendered ballot paper) shall be of a colour different from the other ballot papers, and, instead of being put into the ballot box, shall be given to a polling officer and endorsed by him with the name of the voter and his number on the roll and the name of the electoral area to which the roll relates and shall be set aside in a separate packet and shall not be counted; the name of the voter and his number in the roll and the name or number of the polling station to which the roll relates shall be entered in a list in form VI which shall bear the heading "Tendered Votes List": the person tendering such ballot paper shall sign his name and address thereon or affix his thumb impression against the entry in the list, and if he affixes his thumb impression the presiding officer shall sign his name across such impression.

Tendered
votes.

35. If any candidate or his agent declares and undertakes to prove that any person by applying for a ballot paper has committed the offence of personation, the presiding officer may require such person to state his name and address and shall then enter such name and address in the List of Challenged Votes in form VII and shall require such person to sign such entry, or if he is unable to write to affix his thumb impression thereto and the presiding officer shall sign his name across such impression, and may further require such person to produce evidence of identification, and if such person on being questioned in the manner provided in rule 31, answers the first question in affirmative and the second question in the negative and replies satisfactorily to any other question put to him in pursuance of that rule and if having been required to produce evidence of identification he produces evidence which the presiding officer considers satisfactory, he shall be allowed to vote after he has been informed of the penalty for personation and if the evidence of identification is not considered satisfactory he may be given a challenged ballot paper which shall be of a colour different from the colour of the other ballot papers and from the colour of the tendered ballot papers and instead of being put into the ballot box shall be given to a polling officer and endorsed by him with the name and number of the voter as entered in the list of Challenged Votes and the name of the constituency

Challenged
Votes.

concerned and shall be set aside in a separate package and shall not be counted.

Spoilt ballot papers.

36. A voter who has inadvertently dealt with his ballot paper in such a manner that it cannot conveniently be used as a ballot paper may, after delivering such ballot paper to the presiding officer and satisfying him of such inadvertence, obtain another ballot paper in place of the spoilt paper, and the latter, together with its counterfoil shall be marked as cancelled.

Closing of polling station

37. (1) The presiding officer shall on each day on which polling is to take place close the polling station at the hour appointed under the provisions of sub-rule (1) of rule 26, and no ballot paper shall be issued to any elector after such hour. but any elector who has already received a ballot paper shall be allowed a reasonable time within which to record his vote, provided that if for any reason it was not possible to open the polling station at the hour appointed under the provisions of sub-rule (1) of rule 26, or if by reason of disorder at the polling station or for any other reason the presiding officer deems it necessary to stop the polling for a certain time, the presiding officer shall keep the polling station open for a further period equal to the period that elapsed between the hour appointed for the opening of the polling station and the hour at which it was actually opened or the time during which polling was stopped as the case may be.

(2) If polling is to take place on more than one day at any polling station in respect of the election in any one constituency the presiding officer shall, after closing the polling station, cover the slit on the lid of ballot box used during the day with cloth and seal such cloth with the seal provided and shall then hand over the box to the officer in charge of the police station for safe custody.

Declaration of elected candidates and procedure in case of a tie.

38. As soon as possible after the close of the poll on the last day on which polling is to take place the presiding officer, in the presence of the polling officers and of such candidates or their agents, if any, as may be in attendance, shall open the ballot box or ballot boxes and count the valid votes recorded for each candidate, rejecting as invalid any ballot paper which -

- (a) has not on it the official mark, or
- (b) has no vote recorded on it by means of a cross, or
- (c) is so marked that it is uncertain how the voter intended to vote, or

- ¹(d) bears any mark other than the serial number printed thereon by which the voter can be identified.

39. The candidate who is found to have obtained the greatest number of valid votes or, if more than one member is to be elected for the constituency, the candidates up to the number of members to be elected who are found to have obtained the greatest number of valid votes, shall be declared to have been elected : provided that if it is impossible to determine which candidate or candidates has or have obtained the greatest number of votes owing to two or more candidates having obtained an equal number of votes, the presiding officer shall decide by lot which of such candidates shall be deemed to have been elected and shall declare him or them elected accordingly.

Counting of votes.

40. When the counting of votes has been concluded and a declaration has been made as to which candidate or candidates has or have been elected the presiding officer shall forthwith prepare and forward to the Deputy Commissioner a return showing the names of the candidates, the number of votes recorded for each and the names of the candidates declared to have been elected, and the Deputy Commissioner shall forthwith post a copy of the return in a conspicuous place at his office and shall within one week forward the name of the elected candidates together with the names of candidates deemed to have been elected under the provisions of rule 24 to the Commissioner with a view to their election being notified in the Gazette.

Return of result of election to be forwarded to the Deputy Commissioner

41. The presiding officer shall seal up in separate packets, on the outside of which shall be endorsed a description of their contents, and forward to the Deputy Commissioner—

- (a) the ballot papers counted as valid;
- (b) the ballot papers rejected as invalid;
- (c) the unissued ballot papers;
- (d) the tendered ballot papers;
- (e) the challenged ballot papers;
- (f) the spoilt ballot papers;
- (g) the marked copy of the roll;
- (h) the counterfoils of the ballot papers;
- (i) the counterfoils of the tendered ballot papers;
- (j) the counterfoils of the challenged ballot papers;
- (k) the tender votes list; and
- (l) the list of challenged votes.

Election papers to be forwarded to the Deputy Commissioner.

Custody of
election
papers.

42. (1) The Deputy Commissioner shall retain the packets forwarded to him under the provisions of rule 41 in his custody until the expiry of one year from the date of the election and shall then, subject to any direction to the contrary made by the local Government or a competent court or a person or persons appointed to hold an enquiry into an election under Part VI of these rules, cause them to be destroyed.

(2) Any candidate may apply to the Deputy Commissioner for a copy of the entries made in the List of Tendered Votes or in the list of Challenged Votes and such copy shall be supplied in accordance with the rules governing the supply of copies contained in Standing Order No. 5 of the Financial Commissioner.

(3) Any candidate may apply to the Deputy Commissioner for a copy of an electoral roll as marked under the provisions of rule 32 and such copy shall be supplied on receipt of the price of the roll as fixed under sub-rule (5) of rule 8, together with a fee of five rupees for every hundred marked names on the roll, and the marking of such copy of the marked roll shall be done by the Deputy Commissioner or by an Assistant Commissioner or Extra Assistant Commissioner who as soon as he has marked such copy shall forthwith again seal up the original marked roll.

Procedure
for filling
casual vacan-
cies.

43. When a vacancy occurs among the elected members of a committee either by the death, resignation or removal of any member and a new member has to be elected in his place in accordance with the provisions of sub-section (1) or sub-section (2) of Section 17 of the Act, such election shall be conducted in the manner prescribed in these rules from rule 15 onwards for a general election, and the date of the election shall be fixed as soon as may be convenient after the occurrence of the vacancy, and the electoral roll in force under the provisions of rule 13 shall be deemed to be the electoral roll for the purpose of holding the election.

Appoint-
ment of
officers to
perform
functions of
the Deputy
Commis-
sioner.

44. If on account of illness, absence from headquarters or of any other reason the Deputy Commissioner is unable to perform any of his functions under these rules, he may by order in writing appoint any Assistant Commissioner or Extra Assistant Commissioner to perform such functions on his behalf.

Final
authority for
interpretation
of those
rules.

45. If any question arises as to the interpretation of these rules otherwise than in connection with an election petition, the question shall be referred to the local Government whose decision shall be final.

¹ Substituted by Notification No. 34368, dated 1st November 1932.

PART II.

46. The local Government may, by notification direct that the rules in this Part shall apply to any municipality or to any constituency in a municipality specified in such notification in place of rules 38 to 42 in Part I.

Extent
rules in
part.

47. As soon as possible after close of the poll on each day, except the last day on which polling is to take place, the presiding officer shall cover the slit in the lid of each ballot box used during the day with cloth and seal such cloth with the seal provided and shall thereafter hand over the ballot boxes to the officer in charge of the police station for safe custody until the conclusion of the poll.

Ballot
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each day
handed
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48. (1) As soon as possible after the close of the poll on the last day on which polling is to take place the presiding officer shall, in the presence of any candidates or their agents, who may be present, make up into separate parcels and seal with the seal provided—

Proc
after
close
poll.

- (a) each ballot-box used at the polling station, unopened but with the key attached and with the slit in the lid covered with cloth sealed with the seal provided;
- (b) the unissued ballot papers;
- (c) the tendered ballot papers;
- (d) the challenged ballot papers;
- (e) the spoilt ballot papers;
- (f) the marked copy of the roll;
- (g) the counterfoils of the ballot papers;
- (h) the counterfoils of the tendered ballot papers;
- (i) the counterfoils of the challenged ballot papers;
- (j) the tendered votes list; and
- (k) the list of challenged votes.

(2) On the outside of every parcel made under sub-rule (1) the presiding officer shall note the name of the polling station and the nature of the contents of the parcel and shall then make all the parcels into one package and shall seal the package with the seal provided and mark on it the name and number of the polling station and then forthwith make over the package to the police officer deputed to take charge of it at the polling station who shall forward it with the least possible delay to the Deputy Commissioner; provided that if the number of ballot boxes used at the polling station is so

great as to make it difficult to close them all in one package, the presiding officer shall make such numbers of packages as may be convenient.

(3) The presiding officer shall forward separately to the Deputy Commissioner an account of ballot papers in Form VIII.

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49. On a date and at a time and place appointed by him, of which notice shall be given in writing to each candidate, the Deputy Commissioner or an Assistant Commissioner or Extra Assistant Commissioner appointed by the Deputy Commissioner in this behalf, shall after the receipt of the package from all the polling stations in the constituency and in the presence of any candidate who wishes to watch the proceedings, or his agent, open each ballot box in turn and remove therefrom the ballot papers and with the help of such persons as may be appointed to assist in counting the votes shall count the valid votes recorded for each candidate, rejecting as invalid any ballot paper which —

(a) has not on it the official mark, or

(b) has no vote recorded on it by means of a cross, or

(c) is so marked that it is uncertain how the voter intended to vote, or

(d) bears any mark other than the number on its back by which the voter can be identified;

and shall thereafter check the issued ballot papers with each presiding officer's account of ballot papers.

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50. The candidate who is found to have obtained the greatest number of valid votes or, if more than one member is to be elected for the constituency the candidates up to the number of members to be elected who are found to have obtained the greatest number of valid votes shall be declared to have been elected: provided that if it is impossible to determine which candidate or candidates has or have obtained the greatest number of votes, owing to two or more candidates having obtained an equal number of votes, the Deputy Commissioner shall decide by lot which of such candidates shall be deemed to have been elected, and shall declare him or them elected accordingly.

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¹ **51.** When the counting of the votes has been concluded and it has been declared as to which candidate or candidates has or have been elected, a return showing the names of the candidates, the number of votes recorded for each and the names of the candidates declared to have been elected, shall

¹ ¹ amended by Notification No. 34368, dated 1st November 1932

forthwith be prepared by or under the direction of the Deputy Commissioner who shall forthwith post a copy of the return in a conspicuous place at his office and shall within one week forward the names of the elected candidates together with the names of candidates deemed to have been elected under the provisions of rule 24 to the Commissioner with a view to their election being notified in the Gazette.

52. (1) The Deputy Commissioner or the Assistant Commissioner or Extra Assistant Commissioner appointed under rule 49 shall seal up the parcels of issued and unissued ballot papers, and such parcels together with all other parcels received from the polling station shall remain in the custody of the Deputy Commissioner until the expiry of one year from the date of the election and shall then, subject to any direction to the contrary made by the local Government or a competent court or a person or persons appointed to hold an enquiry into an election under Part VI of these rules, cause them to be destroyed.

Custody of
election
papers.

(2) Any candidate may apply to the Deputy Commissioner for a copy of the entries made in the List of Tenders Votes or in the List of Challenged Votes and such copy shall be supplied in accordance with the rules governing the supply of copies contained in Standing Order No. 5 of the Financial Commissioners.

(3) Any candidate may apply to the Deputy Commissioner for a copy of an electoral roll as marked under the provisions of rule 32 and such copy shall be supplied on receipt of the price of the roll as fixed under sub-rule (5) of rule 8, together with a fee of five rupees for every hundred marked names on the roll, and the marking of such copy of the marked roll shall be done by the Deputy Commissioner or by an Assistant Commissioner or Extra Assistant Commissioner who as soon as he has marked such copy shall forthwith again seal up the original marked roll.

PART III.

53. The local Government may, by notification, direct that the rules in this part shall apply to any municipality specified in such notification in place of sub-rule (2) of rule 22 and rules 27 and 30 to 41 in Part I.

Extent
rules in this
part.

54. (1) Voting shall be by ballot and every person wishing to record his vote shall do so in person, and not by proxy, by means of a ballot paper in Form IX on the inside of which shall be written or printed in English, Urdu, Hindi or Gurmukhi, the name of the candidate for whom he wishes to vote.

Provision
as to ballot
papers.

(2) The Deputy Commissioner shall have supplies of blank ballot papers made ready for distribution on or after the third day succeeding the date fixed for the scrutiny of nominations under the provision of rule 15, and on or after that date any elector who applies for ballot paper shall be supplied with one and any candidate whose name is entered on the list of valid nominations posted under the provisions of rule 22 shall be supplied with such number of ballot papers not exceeding twice the number of voters on the roll of the constituency in question as he may desire for distribution to electors, provided that the candidate shall pay such price for the ballot papers not exceeding three pices per paper as is fixed by the Deputy Commissioner.

(3) Supplies of ballot papers shall also be made available outside and in immediate vicinity of each polling station during the hours of polling and any person who applies for a ballot paper shall be provided with one.

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55. (1) No person shall be permitted to enter a polling station except on production of a closed ballot paper.

(2) Every elector on entering a polling station shall be directed to a polling clerk to whom he shall intimate his name and description, and if any person of such name and description is entered on the roll, the polling clerk shall write on a slip of paper the number of such person on the roll and the elector shall then take his ballot paper and the slip to the presiding officer or a polling officer or polling assistant who shall read out the number, name and description of the elector as entered in the roll and subject to the provisions of rule 56, 57 and 58 shall then cause the signature of the elector, or, if the elector cannot write, his thumb impression to be taken on a foil in a ballot book in Form X and his number on the roll to be entered on such foil, and shall then enter with blue pencil in the space provided for the purpose on the outside of the ballot paper the book number and foil number of the ballot book on which the elector's signature or thumb impression has been taken and after making a mark against his number on the roll shall return the ballot paper to the elector who, after dropping the ballot paper into the ballot box shall forthwith leave the polling station.

(3) Every ballot book shall bear a book number and the foils in each book shall be numbered serially and before bringing a ballot book into use the presiding officer or polling officer shall note on the outside thereof the name, if any, and number of the polling station.

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56. At any time before causing the signature or thumb impression of an elector to be taken on a foil in ballot book the presiding officer or a polling officer may of his own

accord if he has reason to doubt the identity of the elector or his right to vote at the polling station, and shall, if so required by a candidate or his agent, put to the elector the following questions:—

(a) Are you the person enrolled as follows (*reading the whole entry relating to the elector from the roll*)?

(b) Have you already voted at the present election?

(c) Such other questions as he may deem fit or necessary; and the elector shall not be permitted to record his vote unless he answers the first question in the affirmative and the second question in the negative, or if he refuses to answer any other question put to him in pursuance of this rule.

57. If a person on presenting his ballot paper to the presiding officer represents himself to be a particular elector named on the roll after another person has voted as such elector the presiding officer or polling officer shall after putting to such person such questions as he may deem fit cause the signature of such person or, if such person cannot write, his thumb-impression to be taken on a tendered ballot book which shall be in Form X but of paper of a colour different from the colour of the paper of the ordinary ballot book, shall sign his name across such thumb-impression, if any, and shall cause such person's number on the roll to be entered on such foil and shall then enter with red pencil in the space provided for the purpose on the outside of the ballot paper the book number and foil number of the tendered ballot book on which such person's signature or thumb-impression has been taken, and after writing or stamping thereon, the words "Tendered Vote" shall set aside the ballot paper in a separate package and such ballot paper shall not be counted.

Tendered
Votes.

58. If a candidate or his agent declares and undertakes to prove that any person by presenting his ballot paper and representing himself to be a particular elector on the roll has attempted to vote in the name of any other person whether living or dead, the presiding officer may require such person to state his name and address and shall then enter such name and address in the List of Challenged Votes in Form VII, and shall require such person to sign such entry, or, if he is unable to write, to affix his thumb-impression thereto, and shall sign his name across such thumb-impression, if any, and may further require such person to produce evidence of identification, and if such person on being questioned in the manner provided in rule 56 answers the first question in the affirmative and the second question in the negative and replies satisfactorily to any other question put to him in pursuance

Challenged
Votes.

of that rule, and having been required to produce evidence of identification he produces evidence which the presiding officer considers satisfactory, the presiding officer shall proceed in the manner provided in sub-rule (2) of rule 55 and shall permit such person to record his vote, and, if evidence is not considered satisfactory, the presiding officer shall cause the signature of such person or, if such person cannot write, his thumb-impression to be taken on a foil in a challenged ballot book which shall be in Form X but of paper of a colour different from the colour of the ordinary ballot book and from the colour of the tendered ballot book, and shall then enter with blue or black ink in the space provided for the purpose on the outside of the ballot paper the book number and foil number of the challenged ballot book on which such person's signature or thumb-impression has been taken and after writing or stamping thereon the words "Challenged Vote" shall place the ballot paper in a separate package and such ballot paper shall not be counted.

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59. (1) The presiding officer on each day on which polling is to take place shall close the polling station at the hour appointed under the provisions of sub-rule (1) of rule 26 and no person shall be allowed to enter the polling station after such hour but any elector who has already entered the polling station shall be allowed a reasonable time within which to record his vote, provided that if for any reason it was not possible to open the polling station at the hour appointed under the provisions of sub-rule (1) of rule 26, or if by reason of disorder at the polling station or for any other reason the presiding officer deems it necessary to stop the polling for a certain time, the presiding officer shall keep the polling station open for a further period equal to the period that elapsed between the hour appointed for the opening of the polling station and the hour at which it was actually opened or the time during which polling was stopped, as the case may be.

(2) If polling is to take place on more than one day at any polling station in respect of the election in any or constituency the presiding officer shall, after closing the polling station, cover the slit in the lid of the ballot box and during the day with cloth and seal such cloth with the seal provided and shall then hand over the box to the officer in charge of the police station for safe custody.

Counting
if votes.

60. As soon as possible after the close of the poll on the last day on which polling is to take place, the presiding officer, in the presence of the polling officers and of such candidates or their agents, if any, as may be in attendance, shall open the ballot box or ballot boxes and after tearing off

the perforated margins and the upper halves of the closed ballot papers shall count the valid votes recorded for each candidate, rejecting as invalid any ballot paper which—

- (a) has no vote recorded on it; or
- (b) has the names of more than one validly nominated candidate recorded on it; or
- (c) bears the name of a person who is not a validly nominated candidate; or
- (d) bears any mark other than the ballot book and foil numbers by which the elector can be identified.

61. The candidate who is found to have obtained the greatest number of valid votes or if more than one number is to be elected for the constituency the candidates up to the number of members to be elected who are found to have obtained the greatest number of valid votes, shall be declared to have been elected: provided that if it is impossible to determine which candidate or candidates has or have obtained the greatest number of votes, owing to two or more candidates having obtained an equal number of votes, the presiding officer shall decide by lot which of such candidates shall be deemed to have been elected and shall declare him or them elected accordingly.

Declaration
of elected
candidates
and proce-
dure in case
of a tie.

62. When the counting of votes has been concluded and a declaration has been made as to which candidate or candidates has or have been elected, the presiding officer shall forthwith prepare and forward to the Deputy Commissioner a return showing the names of the candidates, the number of votes recorded for each and the names of the candidate or candidates declared to have been elected, and the Deputy Commissioner shall forthwith post a copy of the return in a conspicuous place at his office and shall within one week forward the names of the elected candidates together with the names of candidates deemed to have been elected under the provisions of rule 24 to the Commissioner with a view to their election being notified in the Gazette.

Return of
result of elec-
tion to be
forwarded to
the Deputy
Commission-
er.

63. The presiding officer shall seal up in separate packets, on the outside of which shall be endorsed a description of their contents, and forward to the Deputy Commissioner—

- (a) the ballot papers counted as valid;
- (b) the ballot papers rejected as invalid;
- (c) the tendered ballot papers;
- (d) the challenged ballot papers;
- (e) the marked copy of the roll;
- (f) the ballot books;
- (g) the tendered ballot papers;
- (h) the challenged ballot books.

Election
papers to be
forwarded to
the Deputy
Commission-
er.

PART IV.

Content of
in this

64. The local Government may, by notification, direct that the rules in this Part shall apply to any municipality or any constituency in a municipality specified in such notification in place of rules 60 to 63 in Part III and rule 42 in Part I.

Ballot box-
be seal-
each day
handed
to the
ce.

65. As soon as possible after the close of the poll on each day, except the last day on which polling is to take place, the presiding officer shall cover the slit in the lid of each ballot box used during the day with cloth and seal such cloth with the seal provided and shall thereafter hand over the ballot boxes to the officer in charge of the police station for safe custody until the conclusion of the poll.

Procedure
or the
of the
!

66. (1) As soon as possible after the close of the poll on the last day on which polling is to take place the presiding officer shall, in the presence of any candidates, or their agents, who may be present, make up into separate parcels and seal with the seal provided—

- (a) each ballot box used at the polling station, unopened but with the key attached and with the slit in the lid covered with cloth sealed with the seal provided;
- (b) the tendered ballot papers;
- (c) the challenged ballot papers;
- (d) the marked copy of the roll;
- (e) the ballot books;
- (f) the tendered ballot books;
- (g) the challenged ballot books;
- (h) the list of challenged votes.

(2) On the outside of every parcel made under sub-rule (1) the presiding officer shall note the name of the polling station and the nature of the contents of the parcel, and shall then make all the parcels into one package and shall seal the package with the seal provided and mark on it the name and number of the polling station and shall then forthwith make over the package to a police officer deputed to take charge of it at the polling station who shall forward it with the least possible delay to the Deputy Commissioner: provided that if the number of ballot boxes used at the polling station is so great as to make it difficult to close them all in one package the presiding officer shall make such number of packages as may be convenient.

(3) The presiding officer shall forward separately to the Deputy Commissioner an account of ballot papers in Form XI.

67. On a date and at a time and place appointed by him, of which notice shall be given in writing to each candidate, the Deputy Commissioner or an Assistant Commissioner or Extra Assistant Commissioner appointed by the Deputy Commissioner in this behalf, shall after the receipt of the packages from all the polling stations in the constituency and in the presence of any candidate who wishes to watch the proceedings, or his agent, open each ballot box in turn and remove therefrom the ballot papers and with the help of such persons as may be appointed to assist to counting the votes shall tear off the perforated margins and the upper halves of the ballot papers, and count the valid votes recorded for each candidate, rejecting as invalid any ballot paper which —

Counting
and checking
of ballot
papers.

- (a) has no vote recorded on it; or
- (b) has the names of more than one validly nominated candidate recorded on it; or
- (c) bears the name of a person who is not a validly nominated candidate; or
- (d) bears on the inside any mark by which the elector can be identified;

and thereafter shall open the packets of used, tendered and challenged ballot papers and count them and check the numbers of ballot papers, tendered ballot papers and challenged ballot papers with the numbers of used foils in the ballot books, tendered ballot books and challenged ballot books, respectively.

68. The candidate who is found to have obtained the greatest number of valid votes or, if more than one number is to be elected for the constituency, the candidates up to the number of members to be elected who are found to have obtained the greatest number of valid votes shall be declared to have been elected: provided that if it is impossible to determine which candidate or candidates has or have obtained the greatest number of votes owing to two or more candidates having obtained an equal number of votes, the Deputy Commissioner shall decide by lot which of such candidates shall be deemed to have been elected and shall declare him or them elected accordingly.

Declaration
of elected
candidates
and proce-
dure in case
of tie.

69. When the counting of votes has been concluded and a declaration has been made as to which candidate or candidates has or have been elected a return showing the names of the candidates, the number of votes recorded for each and the names of the candidates declared to have been elected,

Return of
result of
election to be
posted at the
Deputy Com-
missioner's
office.

shall forthwith be prepared by or under the direction of the Deputy Commissioner who shall forthwith post a copy of the return in a conspicuous place at his office and shall within one week forward the name of the elected candidates, together with the name of candidates deemed to have been elected under the provisions of rule 24 to the Commissioner, with a view to their election being notified in the Gazette.

Custody of
election pa-
pers.

70. (1) The Deputy Commissioner or the Assistant Commissioner or Extra Assistant Commissioner appointed under rule 67 shall seal up the parcels of used, tendered and challenged ballot papers and such parcels, together with all other parcels received from polling station, shall remain in the custody of the Deputy Commissioner until the expiry of one year from the date of the election and shall then, subject to any direction to the contrary made by the local Government or a competent court or a person or persons appointed to hold an enquiry into an election under Part VI of those rules, cause them to be destroyed.

(2) Any candidate may apply to the Deputy Commissioner for a copy of the entries made in the list of tendered votes or in the list of challenged votes and such copy shall be supplied in accordance with the rules governing the supply of copies contained in Standing Order No. 5 of the Financial Commissioner.

(3) Any candidate may apply to the Deputy Commissioner for a copy of an electoral roll as marked under the provisions of rule 55 and such copy shall be supplied on receipt of the price of the roll fixed under the sub-rule (5) of rule 8, together with a fee of five rupees for every hundred marked names on the roll, and the marking of such copy of the marked roll shall be done by the Deputy Commissioner or by Assistant Commissioner or Extra Assistant Commissioner, who as soon as he has marked such copy shall forthwith again seal up the original marked roll.

PART V.

Election of
President or
Vice-President.

71. (1) No election of a president or vice-president of a committee shall be held at a meeting unless not less than forty-eight hours' notice of the holding of such meeting has been given to all members of the committee by delivery at their ordinary place of residence of a notice, which shall specify that such election is to take place at the meeting in question.

(2) The person or persons elected shall, subject in the case of the election of a president to the provision of sub-section (1) of Section 20 of the Act, assume office from the date of election.

72. Voting for the office of president or vice-president shall be by ballot, and if only one candidate for the office is proposed, the members present shall be required to vote by writing "Yes" or "No" on the ballot paper, and if a majority of votes is not in the affirmative, the election shall be postponed to the next meeting of the committee when a further ballot shall be taken in respect of such candidates as may then be proposed, and the chairman of the meeting shall not have a casting vote.

Ballot to be taken.

73. (1) When the office of president or the office of vice-president of a committee of which there is only one office of vice-president, has to be filled—

Method of electing president and vice-presidents.

- (a) if one candidate obtains more votes than any other, then such candidate shall be deemed to be elected;
 - ¹(b) if two or more candidates obtain an equal number of votes, the chairman of the meeting shall at once decide between the candidates by drawing lots in the presence of the members attending the meeting.
- (2) When there are two offices of vice-president of a committee and both such offices have to be filled—
- (a) voting shall take place at the same election for both the offices of vice-president of the committee and each member of the committee shall record only one vote;
 - (b) the two candidates who obtained the largest number of votes shall be deemed to be elected: provided that if, owing to the fact that two or more candidates have obtained an equal number of votes, it is impossible to decide which two candidates have obtained the largest number of votes the matter shall be decided by lot by the Deputy Commissioner in the manner specified in clause (b) of sub-rule (1) of this rule;
 - (c) the candidate obtaining the largest number of votes shall be deemed to have been declared by the committee to be the senior vice-president, and the candidate obtaining the second largest number of votes shall be deemed to be the junior vice-president, provided that if both the candidates elected have obtained an equal number of votes, the matter shall be decided by show of hands at a meeting presided over by the president, the president having a casting vote if the votes are otherwise equal.

¹ Amended by Notification No. 34368, dated 1st November 1932.

Casual vacancies how to be filled.

74. When there are two offices of vice-president of a committee and one such office falls vacant, the vice-president remaining in office shall be deemed to be senior vice-president and an election shall be held in the manner specified in rule 72 and sub-rule (1) of rule 73 to fill the office of junior vice-president.

PART VI.

Definitions.

75. In this part unless there is anything repugnant in the subject or the context—

(a) “Corrupt practice” means—

Bribery by candidate or agent of candidate.

- (i) a gift, offer or promise by a candidate or an agent of a candidate, or by any other person with the connivance of a candidate or any such agent, of any gratification to any person whomsoever, with the object, directly or indirectly, of inducing a person to stand or not to stand as, or to withdraw from being, a candidate or an elector to vote or refrain from voting at an election, or as a reward to a person for having so stood or not stood or for having withdrawn his candidature, or an elector for having voted or refrained from voting;

Explanation.—For the purpose of this clause the term ‘gratification’ is not restricted to pecuniary gratification or gratifications estimable in money, and includes all forms of entertainment and all forms of employment for reward; but it does not include the payment of any expenses *bona fide* incurred at or for the purposes of any election.

Interference by candidate or agent.

- (ii) any direct or indirect interference or attempt to interfere on the part of a candidate or an agent of the candidate or of any other person with the connivance of the candidate or any such agent, with the free exercise of any electoral right;

Explanation.—(1) Without prejudice to the generality of the provisions of this clause, any such person as is referred to herein who threatens any candidate or voter or any person in whom a candidate or voter is interested, with injury of any kind; or induces or attempts to induce a candidate or voter to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or voter within the meaning of this clause;

(2) a declaration of public policy or a promise of public action or the mere exercise of a legal right without intent to interfere with an electoral right shall not be deemed to be interference within the meaning of this clause.

(iii) the procuring of, or the abetting or attempting to procure by a candidate or any agent of a candidate or by another person with the connivance of a candidate or any such agent, the application for or the presentation of a ballot paper by a person in the name of any other person, whether living or dead, or in a fictitious name, or the application for or presentation of a ballot paper by a person who has already voted once at an election in his own name at the same election;

Personation procured by candidate or agent.

(iv) the publication by a candidate or any agent of a candidate, or by any other person with the connivance of the candidate or any such agent, of any statement of fact which is false and which he either believes to be false or does not believe to be true in relation to the personal character or conduct of any candidate or in relation to the candidature or withdrawal of any candidate, which statement is reasonably calculated to prejudice the prospects of such candidate's election;

Publication of false statements by candidate or agent.

(v) any act specified in sub-clause (i), (ii), (iii) or (iv), when done by a person who is not a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent;

Bribery, undue influence, procuring of personation, publication of false statements by person other than candidate or agent.

(vi) the application for or presentation at an election of a ballot paper by a person in the name of any other person, whether living or dead, or in a fictitious name or in his own name after he has already voted at such election;

Personation.

(vii) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward by a person to stand or not to stand as, or to withdraw from being, a candidate, or by any person whomsoever for himself or any other person for voting or refraining from voting, or for inducing or attempting to induce any elector to vote or refrain from voting or any candidate to withdraw his candidature.

Receipt of gratification.

(b) 'candidate' means a person who has been nominated as a candidate at any election and includes a person, who when an election is in contemplation, holds himself out as a prospective candi-

date thereat and is subsequently nominated as a candidate at such election;

(c) 'election' means the election of a member, president, or vice-president of a municipal committee;

(d) 'elector' means a person whose name is registered on the roll of the constituency against the return of a candidate to represent which a petition is presented or, for the purpose of a petition against the return of a president or a vice-president, a person whose name is registered on the roll of any constituency;

(e) 'material irregularity' in the procedure of an election includes any such improper acceptance or refusal of any nomination or improper reception or refusal of a vote or reception of any vote which is void or non-compliance with the provisions of the Act or of the rules made thereunder, or mistake in the use of any form annexed thereto as materially affects the result of an election.

Election
not to be
questioned
except by
petition.

76. No election shall be called in question except by an election petition presented in accordance with these rules.

The elec-
tion petition.

77. An election petition against the return of a candidate at a municipal election or against the return of a president or vice-president or against an unsuccessful candidate with a view to his disqualification under rule 92 on the ground of a corrupt practice or material irregularity in the procedure shall be in writing, signed by a person who was a candidate at the election or by not less than five electors, and the petition shall be presented to the Deputy Commissioner or an Assistant Commissioner or Extra Assistant Commissioner appointed by the Deputy Commissioner in this behalf within fourteen days after the day on which the result of the election was declared, provided that the limit of fourteen days prescribed by this rule may be extended by the Deputy Commissioner if there are in his opinion sufficient grounds for such extension.

Explanation.—For the purpose of this rule in a constituency in which a candidate is deemed to be elected under the provisions of rule 24 the day on which the list of valid nomination is posted under the provisions of sub-rule (1) of rule 22 shall be deemed to be the day on which the result of the election was declared.

Contents of
the petition.

78. (1) The petition shall contain a statement in concise form of the material facts on which the petitioner relies and shall, where necessary, be divided into paragraphs numbered consecutively, and shall be signed by the petitioner

and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

(2) The petition shall be accompanied by a list signed and verified in like manner setting forth full particulars of any corrupt practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed any corrupt practice and the date and place of the commission of each such practice.

(3) The Commission may upon such terms as to costs and otherwise as it may direct at any time allow the particulars included in the said list to be amended or order such further and better particulars in regard to any matter referred to therein to be furnished as may in its opinion be necessary for the purpose of ensuring fair and effectual trial of the petition : provided that particulars as to any additional corrupt practice not contained in the said list shall not be added by means of any such amendment.

79. (1) At the time of, or before presenting an election petition, the petitioner or petitioners shall deposit in the treasury, or a sub treasury, if the election was an election of a member, president or vice-president of the committee of a municipality specified in the Schedule to these rules, five hundred rupees, or if the election was an election of a member, president or vice-president of the committee of any other municipality, two hundred and fifty rupees in cash or in Government Promissory Notes of equal value at the market rate of the day as security for all costs that may become payable by him or them.

Deposit to be made when petition is presented and return of deposit

(2) If a petitioner by whom the deposit referred to in sub-rule (1) has been made withdraws his election petition as provided in rule 84, and in any other case after final orders have been passed on the election petition, the deposit shall, after such amount as may be ordered to be paid as costs, charges and expenses has been deducted, be returned to the petitioner by whom it was made; and if the petitioner dies during the course of the enquiry into the election petition, any such deposit, if made by him, shall after the amount of such costs as may be ordered to be paid have been deducted, be returned to his legal representative.

(3) All applications for the refund of a deposit shall be made to the Deputy Commissioner who shall pass orders thereon in accordance with these rules.

80. The Deputy Commissioner shall forward every election petition received by him under rule 77 to the local Government.

Petition to be forwarded to Government.

Petition to
be dismissed
for non-com-
pliance with
rules.

81. If any provisions of rule 77 or rule 79 have not been complied with, the local Government shall pass an order dismissing the election petition, and such order shall be final.

Persons to
be appointed
for enquiry
into a peti-
tion.

82. (1) If the election petition is not dismissed under rule 81, the local Government shall appoint a person or persons, hereinbefore and hereinafter referred to as the Commission, to hold an enquiry into the allegations made in the election petition.

(2) The local Government may appoint a person by name or by office to be a Commission under this rule, and if a person is appointed by virtue of his office the person for the time being holding the office shall be the Commission unless the local Government shall otherwise direct.

(3) If a vacancy occurs in a Commission by reason of death, transfer, resignation or any other cause the local Government may make a fresh appointment as provided by clause (2) of this rule.

(4) A change of incumbency in the Commission whether by reason of death, transfer, resignation or any other cause shall not invalidate any previous or subsequent proceedings in any matter pending before it, nor shall it be necessary for a Commission on account of such change to recommence any inquiry into any matter pending before it for disposal.

(5) The Commission shall cause to be served on each respondent a notice of the presentation of the petition, together with a copy of the petition, and shall summon each respondent and in his presence or if he fails to be present or in person or by counsel after summons has been duly served upon him, or in his absence shall make an enquiry regarding the corrupt practices or irregularities alleged to have been committed.

Place and
procedure of
enquiry.

83. (1) The enquiry shall be held in a place to which the public have free access and notice of the time and place of enquiry shall be given to the parties not less than seven days before the first day of the enquiry.

(2) The place of enquiry shall be within the municipality provided that the Commission may, on being satisfied that special circumstances exist rendering it desirable that the enquiry should be held elsewhere, appoint some other convenient place for the enquiry.

(3) Subject to the provisions of these rules every election petition shall be enquired into as nearly as may be in accordance with the procedure applicable under the Code

of Civil Procedure, 1908, to the trial of suits, provided that if the Commission consist of more than one person it shall only be necessary for it to make or cause to be made a memoranda of the substance of the evidence of any witness.

84. (1) An election petition may be withdrawn only by leave of the Commission or if an application for withdrawal is made before any Commission has been appointed, of the local Government.

Withdrawal
of petition.

(2) If there are more petitioners than one, no application to withdraw a petition shall be made except with the consent of all the petitioners.

(3) When an application of withdrawal is made to the Commission notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published by being posted at the office of Deputy Commissioner and at the municipal office.

(4) No application for withdrawal shall be granted if in the opinion of the local Government or of the Commission, as the case may be, such application has been induced by any bargain or consideration which ought not to be allowed.

(5) If the application is granted—

- (a) the petitioner shall, where the application has been made to the Commission be ordered to pay the costs of the respondent theretofore incurred or such portion thereof as the Commission may think fit;
- (b) notice of the withdrawal shall be published by being posted at the office of the Deputy Commissioner and at the municipal office;
- (c) any person who might himself have been a petitioner may, within fourteen days from the date of such publication, apply to be substituted as petitioner in place of the party withdrawing and, upon compliance with the conditions of rule 79 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the local Government or the Commission may think fit.

(6) When an election petition is allowed by the Commission to be withdrawn the file of the proceedings shall be forwarded to the local Government for information.

statement
substitu-
n death
itioner.

85. (1) An election petition shall abate only on the death of a sole petitioner or of the survivor of several petitioners.

(2) Notice of the abatement of an election petition shall be published by the Commission or, if the petition abates before any Commission has been appointed, by the local Government by being posted at the office of the Deputy Commissioner and at the municipal office.

(3) Any person who might himself have been a petitioner may within fourteen days from the date of such publication, apply to be substituted as petitioner, and, upon compliance with the conditions of rule 79 as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the local Government or the Commission may think fit.

statement
substitu-
n death
ndent

86. If before the conclusion of the trial of an election petition the respondent dies or gives notice that he does not intend to oppose the petition the Commission shall cause notice of such event to be published by being posted at the office of the Deputy Commissioner and at the municipal office, and thereupon any person who might have been a petitioner may, within fourteen days from the date of such publication, apply to be substituted for such respondent to oppose the petition and shall be entitled to continue the proceedings upon such terms as the Commission may think fit.

, u n d s
eclaring
n void.

87. (1) Save as hereinafter provided in these rules if in the opinion of the Commission—

- (a) the election of a returned candidate has been procured, or induced or the result of the election has been materially affected, by a corrupt practice, or
- (b) any corrupt practice specified in sub-clause (i), (ii), (iii) or (iv) of clause (a) of rule 75 has been committed, or
- (c) there has been any material irregularity, or
- (d) the election has not been a free election by reason of the large number of cases in which the corrupt practices specified in sub-clause (i) or (ii) of clause (a) of rule 75 have been committed by a candidate or an agent of a candidate or a person acting with the connivance of a candidate or such agent or any person who is not a candidate or an agent of such candidate or a person acting with the connivance of a candidate or such agent,

the Commission shall report that the election of the returned candidate should be deemed to be void.

(2) If the Commission reports that a returned candidate has been guilty by an agent of any corrupt practice which does not amount to any form of bribery other than treating as hereinafter explained or to the procuring or abetment of personation, and if the Commission further reports that the candidate has satisfied it that—

- (a) no corrupt practice was committed at such election by the candidate and the corrupt practices mentioned in the report were committed contrary to the orders and without the sanction or connivance of such candidate, and
- (b) such candidate took all reasonable means for preventing the commission of corrupt practices at such election, and
- (c) the corrupt practices mentioned in the said report were of a trivial, unimportant and limited character and did not materially affect the result of the election, and
- (d) in all other respects the election was free from any corrupt practice on the part of such candidate,

then the Commission may report that the election of such candidate should not be deemed to be void.

Explanation.—For the purpose of this sub-rule “treating” means the incurring in whole or in part by any person of the expense of giving or providing any food, drink, entertainment or provision to any person with the object directly or indirectly of inducing him or any other person to vote or refrain from voting or as a reward for having voted or refrained from voting.

88. (1) At the conclusion of the inquiry the Commission shall report whether the returned candidate has in its opinion been duly elected, and in so reporting shall have regard to the provision of rule 87.

Report
Commission
and pro-
cedure therec

(2) The reasonable expenses incurred by any person in attending to give evidence may be allowed by the Commission to such person, and shall, unless the Commission otherwise direct, be deemed to be part of the costs.

¹(3) The report of the Commission shall contain definite finding regarding the amount of the cost that should, in the opinion of the Commission, be allowed and the parties by whom and to whom such cost should be paid and such particulars of the amount assessed as cost as are prescribed in the case of civil suits shall be either specified in the Commission's report or attached to the report in the form of a memorandum and the Commission may recommend that interests on cost at a rate not exceeding

¹ Amended by Notification No. 34368, dated 1st November, 1932.

six per cent. per annum, may be allowed and such interest shall be added to the cost.

¹(4) Before submitting the report the Commission shall fix date for the presence of the parties or their agents and shall announce the substance of the report including the finding on the question of costs to such of the parties or their agents as may be present on that date.

findings
corrupt
practices and
guilty.

²89. Where any charge is made in an election petition of any corrupt practice, the Commission shall record in its report—

(a) a finding whether a corrupt practice has or has not been proved to have been committed by any candidate or any agent of a candidate or with the connivance of any candidate or any such agent, and the nature of such corrupt practice, and

(b) the names of all persons (if any) who have been proved at the inquiry to have been guilty of any corrupt practice and the nature of such corrupt practice with any such recommendations as they may desire to make for the exemption of any such persons from any disqualifications to which they may have become liable in this connection under these rules:

Provided that no person shall be so named in the report unless he has been given a reasonable opportunity of showing cause why his name should not be so recorded.

Note.—The procedure for the submission of the report by the Commission and the passing of the orders thereon is prescribed in Section 254 and 255 of the Act.

persons
guilty of cor-
rupt practice
be de-
clared ineligi-
ble for muni-
cipal office.

90. If, as the result of an enquiry, it is established to the satisfaction of the Commissioner or the local Government or the District Judge, as the case may be, that any person has been guilty of a corrupt practice other than a corrupt practice of the description referred to in sub-rule (2) of rule 87 and committed in circumstances in which the Commission may under the provisions of the said sub-rule find that an election should not be deemed to be void, the Commissioner if the enquiry related to an election in a municipality of the second class, or the local Government in any other case, may declare that such person shall be incapable of being elected or nominated to membership or to any office whether honorary or paid of any local authority for a period which may extend to five years.

¹ Amended by Notification No. 34368, dated 1st November 1932.

² Added by Notification No. 34122, dated 26th December, 1933.

90-A. When issuing final orders under rule 90 or rule¹ 91, the Commissioner or the local Government, as the case may be, shall pass such orders regarding cost and the persons by and to whom such costs are to be paid as it may deem fit and such orders shall be final. (Added by Notification No. 36369, dated 1st November, 1932.)

91. The Commissioner or the local Government may remand any case for further enquiry.

Power to remand for further enquiry.

92. The local Government may of its own motion direct an enquiry to be held into the conduct of any election if there is reason to suspect that a corrupt practice or material irregularity has been committed and the case shall be dealt with so far as may be in the manner prescribed in these rules.

Power of Government to order an enquiry.

93. When as a result of any enquiry under these rules the election of a candidate is declared void, the Commissioner or the local Government, as the case may be, shall direct that a new election shall be held, and, if in any case in which the Commissioner has passed orders but the candidate has already taken his seat on the committee, the Commissioner shall report the matter to the local Government with a view to the issue of a direction under clause (e) of Section 14 of the Act that the seat of such member shall be vacated:

Fresh election to be held if an election is declared void

* Provided that if the Commission has found that there has been a mistake in the counting of votes or in the declaration of invalid votes, and that but for that mistake some candidate would have been declared successful, the Commissioner or the local Government, as the case may be, may, instead of directing that a new election shall be held declare that the candidate found to have the largest number of votes shall be declared to have been elected.

94. If in any case in respect of which the Commissioner has passed orders a charge of corrupt practice is found to have been established, the Commissioner shall forward the record of such case to the local Government for such action under Section 106 of the Code of Criminal Procedure as may be deemed necessary.

Record to be forwarded by the Commissioner to the local Government if a charge of corrupt practice is established.

¹ This rule should be omitted as required by Notification No. 4237, dated 6th February 1934.

* Added by Notification No. 21442, dated 15th August 1933

Schedule Rule 17 (1)

- | | |
|------------------------|-----------------|
| 1. Ambala. | 14. Karnal. |
| 2. Amritsar. | 15. Kasur. |
| 3. Batala. | 16. Lahore. |
| 4. Bhivani. | 17. Ludhiana. |
| 5. Dalhousie. | 18. Lyallpur. |
| 6. Dera Ghazi Khan. | 19. Multan. |
| 7. Ferozepore. | 20. Murree. |
| 8. Gujranwala. | 21. Panipat. |
| 9. Gujrat. | 22. Rawalpindi. |
| 10. Hissar. | 23. Rewari. |
| 11. Hoshiarpur. | 24. Rohtak. |
| 12. Jang-cum-Maghiana. | 25. Sialkot. |
| 13. Jullundur. | 26. Simla. |

Note.—All forms except No. I and IV have been omitted.

FORM I.

[RULE 8.]

Electoral Roll.

Municipality _____

Constituency (ward or class) _____

¹ Serial Number	Name and father's name of elector	Place of residence of elector	Caste of elector	Occupation of elector	² Community of elector.
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² Electors shall be numbered serially within constituencies.

* Added by Government (Punjab), Notification No. 24368, dated the 1st November 1932.

FORM IV.

[RULE 16 (1).]

Nomination Paper.

Name of constituency
 Name of candidate.....
 Father's name.....
 Caste
 Occupation
 Address.....

 Constituency on electoral roll of which the candidate is registered as an elector.....
 Number of the candidate on the electoral roll of the constituency in which he is registered as an elector
 Name of the proposer
 Number of the proposer on the electoral roll of the constituency in which the candidate is a candidate for election..
 Signature of the proposer.....
 Name of the seconder.....
 Number of the seconder on the electoral roll of the constituency in which the candidate is a candidate for election.....
 Signature of the seconder

Declaration by Candidate.

I hereby declare that I agree to this nomination.

Date..... Signature of candidate.....

Note.—This nomination paper will not be valid unless it is delivered to the Deputy Commissioner or other person authorized to receive it at his office before 3 P. M. on.....19 .

(To be filled in by Deputy Commissioner or other authorized person:—)

Certificate of Delivery.

Serial No.....

This nomination paper was delivered to me at my office at (date and hour).

Date..... Signature of Deputy Commissioner or other authorized person.

Certificate of Scrutiny.

[RULE 21 (2)].

I have scrutinized the eligibility of the candidate, the proposer and seconder, and find that they are respectively qualified to stand for election, to propose and to second the nomination, and I therefore accept the nomination.

Or

I have scrutinized this nomination and reject it for the following reasons :—

Date

.....
 Signature of officer scrutinizing the nomination.

1076 RULES RE DISMISSAL ETC. OF MUNICIPAL EMPLOYEES

Rules as to the procedure to be observed by Municipal Committees in dismissing their officers and servants and as to appeal from such orders.

Punjab Government Notification 4421, dated 17th February 1925.

RULES.

1. In these rules " Dismissal " means permanent removal from a substantive appointment for misconduct or incompetence; and includes discharge for misconduct under sub-section (1) of Section 45 of the Act.

2. No officer or servant of a Committee shall be dismissed except after an enquiry as provided in rule 3 : provided that no such enquiry shall be necessary if the accused is absconding or if he is to be dismissed on facts or inferences based on the findings of a Court.

3. A definite charge shall be framed in writing in respect of each offence alleged against the officer or servant sought to be dismissed. The charge shall be explained to the accused and the evidence in support of it, and any evidence that the accused may adduce in his defence shall be recorded in his presence and his defence taken down in writing. Each of the charges framed shall be discussed and a finding shall be recorded on each charge.

4. An officer or servant dismissed by less than a two-thirds majority of all the members, from a substantive appointment carrying a salary of twenty-one rupees per mensem or more may, within thirty days from the date of the order of dismissal, appeal to the Commissioner if he has been dismissed by a Committee of the first class; or to the Deputy Commissioner if he has been dismissed by a Committee of the second class, unless the Deputy Commissioner is himself a member of such Committee or the appointment in question is that of Secretary, Engineer or Medical Officer of Health, in which cases the appeal shall lie to the Commissioner :

Provided that nothing in this rule shall preclude a Committee from providing by resolution that appeals shall lie to itself from orders of dismissal passed by any authority to which the Committee has delegated its powers under Section 33 or Section 34 of the Act. The orders of the Committee on such appeals shall be deemed to be its original orders for appeal under this rule; but if the Committee has not provided for an appeal, the orders of such authority shall be deemed to be the orders of the Committee for appeal under this rule :

Provided further that the appellate authority may, if it thinks fit, extend in any particular case the period allowed by this rule for the presentation of appeals.

5. The order of the Commissioner or Deputy Commissioner, as the case may be, under rule 4, shall be final.

6. These rules shall not apply to officers or servants of Government on foreign service with a Committee or to municipal watchmen; and nothing in these rules shall affect the powers conferred on the Deputy Commissioner and the Commissioner by Sections 41 and 42 of the Act.

17. When the Deputy Commissioner or the Commissioner purposes to direct a committee to dismiss any person under Section 41 of the Punjab Municipal Act, 1911, he shall follow the procedure prescribed by rule 3 above.

(Note.—In view of the amendment of Sections 41 and 32 the words “any person authorized by the local Government under Section 32” should be substituted for “the Deputy Commissioner or the Commissioner.”)

Electoral and General Rules applicable to Small Towns in the Punjab.

Published by Punjab Government Notification No. 29388, dated 13th December 1923, as subsequently amended.

ELECTORAL RULES.

1. Every small town shall be divided into two or more wards which shall be scheduled by notification under Section 4 of the Act.

2. ¹ Every male British subject or natural born subject of a State in India, of sound mind, and not less than 21 years of age, who during the twelve months preceding the 1st day of December in the year in which the register of voters is prepared has ordinarily resided or carried on business within the limits of the small towns shall be entitled to have his name registered as a voter in the small town if he—

- (a) pays in the small town Rs. 4 per annum or upwards as town rate or any other rate or tax payable under the Act; or
- (b) in a small town where no town rate has been assessed, has an income of at least Rs. 15 per mensem; or
- (c) possesses immovable property situate within the limits of the small town of a value of not less than Rs. 200; or
- (d) pays not less than Re. 1 per mensem as rent for a house or part of a house situate within the limits of the small town; or
- (e) pays not less than Rs. 5 per annum as land revenue within the Tahsil wherein the small town is situated; or
- (f) has passed the Matriculation and School Leaving Certificate or any equivalent examination recognised by the Punjab University or any Oriental Title Examination of the Punjab University.

3. Every person entitled shall be registered as a voter in any one ward of the small town, namely, either in the ward where he resides, or at his choice in the ward, if any, wherefrom he derives any part of his qualification, but no one shall be entitled to give more than one vote, anything contained in rule 2 notwithstanding.

¹ Amended by Punjab Government Notification No. 30256, dated the 16th September, 1932.

² Amended by Punjab Government Notification No. 3742-A, dated 5th February 1924.

4. Where two or more persons are jointly qualified under rule 2 (a) or 2 (b) every such person shall be severally deemed qualified as a voter, provided he would be so qualified if his share was separate.

5. Every person, who is qualified as a voter under these rules and is not less than 25 years of age, shall be eligible for election as a member of the Town Committee but no one shall be so eligible who—

- (a) is under contract as regards work to be done for, or goods to be supplied to, the Town Committee;
- (b) receives any remuneration out of the Town Fund for services rendered to the Town Committee;
- (c) has been proscribed from Government employment within three years from the date of the election;
- ¹(d) has within the five years preceding the date of the election been sentenced or subjected by any Court to imprisonment for a period exceeding three months, or been ordered by any Court to execute a bond for his good behaviour for a period exceeding three months;
- (e) has been adjudged an insolvent;
- ²(f) is a whole time salaried servant to Government;
- ³(g) has within five years from the date of election been removed from the membership of a Municipal Committee or Notified Area Committee under Section 16 of the Punjab Municipal Act, 1911, or has been removed from the membership of District Board under Section 14 of the Punjab District Boards Act, 1883, or has been removed from a *panchayat* under Section 7 of the Punjab Village Panchayat Act, 1921:

* Provided that the Commissioner may, in cases not covered by Section 13 of the Indian Electoral Offences and Enquiries Act, 1920, exempt any person or class of persons from disqualification contained in clauses (b), (e) or (d) of this rule.

6. A general election shall be held for those seats on a Committee which are to be filled by election on such date or dates (between the 10th day of April and the 10th day of May) as the Deputy Commissioner may determine.

7. The Deputy Commissioner shall, by the 31st December, preceding a general election, cause to be prepared in Form I appended to these rules a separate register for each election ward of persons entitled to be registered as voters.

8. As soon as the registers have been prepared under rule 7 public notice of the fact shall be given, together with an intimation that the registers are open to inspection at the Town Office.

¹ Substituted for the original sub-clause (d) by P. G. Notn. 22988, dated 21st October, 1924.

² Added by P. G. Notn. No. 2680, dated 16th August 1924.

³ Added by P. G. Notn. No. 6227, dated 11th March 1925, as corrected by No. 4292, dated 6th April 1925.

* Amended by P. G. Notn. No. 22988, dated 21st October 1924.

9. (i) Any person whose name is not entered in the register of voters and who claims to be registered as a voter and any person whose name is so entered and who objects to the entry of the name of any other person, may, on or before the twentieth day of January, give notice in writing personally or through his representative of his claim or his objection, as may be to the Deputy Commissioner or to an Assistant Commissioner or Extra Assistant Commissioner or Tahsildar appointed by the Deputy Commissioner in this behalf.

(ii) Every such claim or objection received on or before the due date shall be enquired into by the Deputy Commissioner or by an Assistant Commissioner or Extra Assistant Commissioner or Tahsildar appointed by the Deputy Commissioner in this behalf, who after hearing the claimant or objector, or his representative and after taking such evidence as he may consider necessary may reject or admit such claim or objection.

(iii) No appeal shall lie from the order passed by the Deputy Commissioner or an Assistant Commissioner or Extra Assistant Commissioner or Tahsildar acting under clause (ii) of this rule, but an order passed by such Assistant Commissioner or Extra Assistant Commissioner or Tahsildar shall be subject to revision by the Deputy Commissioner, provided that every application for revision must be submitted within three days of the date of the order to be revised.

(iv) The Deputy Commissioner shall, not later than the last day of February, cause the registers of voters to be corrected, if necessary, in accordance with any order passed under this rule.

10. (i) The registers of voters prepared under rule 7 and corrected, if necessary, under rule 9 (iv) shall be deemed to be the registers of persons entitled to vote with effect from the first day of April (following) until the last day of March in the following year, and no person shall be entitled to vote whose name is not entered in this register during that period.

(ii) The registers of voters shall be subjected to such correction yearly before the first day of April as may be necessary to bring them up to date, and shall after such correction be deemed to be the registers of persons entitled to vote with effect from that date until the last day of March in the following year. Claims to be registered as a voter or objections to the entry of any person's name in the register may be submitted at any time between the first and the twentieth day of January in each year, and shall be dealt with as nearly as may be in the manner prescribed for claims or objections submitted under rule 9 (i).

11. (i) On or before the fifteenth day of February preceding a general election the Deputy Commissioner shall issue public notice fixing the date or dates on which the elections shall be held for those seats which are to be filled by election and calling on candidates to submit their nomination papers to him on or before 4 P. M. on the last day of February.

(ii) Every candidate for election as the representative of any ward shall be nominated by not less than five registered voters belonging to the ward in question. Such nominations shall be made on Form II appended to these rules, which shall be subscribed by the nominators and also by the candidate in each case to indicate his assent to such nomination. The document shall contain such particulars of the nominators and the candidate as may be reasonably sufficient for their identification.

(iii) On or before the fifth day of March the Deputy Commissioner shall publish a notice containing a list of the candidates who have been nominated and intimating that the nomination papers may be scrutinised at his office on a date not later than the twelfth day of March to be specified in the notice, and that any person may on that date submit in writing his objection to the regularity of any nomination or the eligibility of any candidate.

(iv) Every objection made under clause (iii) of this rule and received on or before the due date shall be enquired into by the Deputy Commissioner or by an Assistant Commissioner or Extra Assistant Commissioner or Tahsildar appointed by the Deputy Commissioner this behalf, who after hearing the objector or his representative and after taking such evidence as he may consider necessary, shall pass orders allowing or disallowing the candidature objected to: provided that if an objection is made on the score that the candidate is disqualified under sub clause (d) of rule 5 the Deputy Commissioner shall forthwith obtain the orders of the Commissioner as to whether the candidate in question shall be exempted from such disqualification and on receipt of such orders shall pass an order allowing or disallowing the candidature accordingly.

(v) The Deputy Commissioner may also of his own motion pass an order disallowing any candidature if the nomination of the candidate was irregular or if that candidate was not eligible for election as a member under any rules for the time being in force in the small town in question: provided that if he considers any candidature should be disallowed on the score that the candidate is disqualified under sub clause (d) of rule 5 he shall proceed in the manner prescribed in clause (iv) of this rule on an objection to a candidature based on these reasons.

(vi) No appeal shall lie from any order passed by the Deputy Commissioner or by an Assistant Commissioner or Extra Assistant Commissioner or Tahsildar under clause (iv) or (v) of this rule, but any such order passed by an Assistant Commissioner, or Extra Assistant Commissioner or Tahsildar shall be subject to revision by the Deputy Commissioner: provided that every application for revision must be submitted within three days of the date of the order to be revised.

12. The Deputy Commissioner shall, at least one week before the date fixed for the election, publish a list of all candidates who, after the nomination papers have been scrutinised and the objection, if any, received under rule 11 (iii) have been enquired into, are found to have been validly nominated.

13. (i) If only one duly nominated candidate stands for election to any seat, he shall be deemed to have been duly elected a member.

(ii) If more than one duly nominated candidates stand for election to any seat, a poll shall be taken on the day fixed for the election in respect of that seat.

(iii) If at any time before the declaration of the poll a duly nominated candidate intimates to the Deputy Commissioner in writing that he withdraws from his candidature, his name shall be removed from the list of candidates.

(iv) If no candidate is validly nominated for election to any seat, the Deputy Commissioner shall fix a further date by which candidates for election may be nominated and shall proceed as nearly as may be in accordance with rule 11, with regard to the scrutiny of objections against such nominations.

14. If under rule 13 (ii) a poll is to be taken in respect of any seat, the Deputy Commissioner shall issue a notice at least one week before the date fixed for the election fixing the time or times and place or places at which the poll shall be taken. Such places shall be known as "polling stations"

15. The Deputy Commissioner shall appoint one or more persons of the position of a Gazetted Officer, or Tahsildar or Naib Tahsildar hereinafter termed "the Returning Officer" to preside over the election at each polling station, and such returning officers shall be assisted by one or more persons as may be considered necessary. If there are more returning officers than one, the Deputy Commissioner shall nominate one of these to be the first returning officer.

16. The first returning officer shall be supplied with a copy of the register of voters and with a copy of the list of valid nominations of candidates for election referred to in rule 12

17. Voting shall be by ballot; ballot papers shall be in form III appended to these rules; all votes shall be given in person at the polling station and no voting by proxy shall be allowed.

18. (i) When a person presents himself to vote but not afterwards, the first returning officer may of his own accord, and shall if so required by the candidate or his agents, put to the person all or any of the following questions, the answers to which shall be recorded in writing and the record signed by the first returning officer and by the person who gives the answers—

(a) Are you the person registered in the register of voters as follows (*reading the whole entry from the register*)?

(b) Have you already voted at the present election?

(c) Such other questions as he may think fit or necessary.

(ii) No person required to answer any of these questions shall be permitted to vote until he has answered it.

(iii) Every person presenting himself to vote shall, if he be literate, sign his name opposite the corresponding entry in the copy of the register of voters supplied to the first returning officer, or,

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if he be illiterate, shall affix his thumb mark thereto, in the presence of the first returning officer.

(iv) The first returning officer shall then give to the voter a ballot paper or papers bearing an official mark.

19. (i) The voter on receiving the ballot paper shall make a cross against the name of the candidate for whom he votes ; he shall put his ballot paper into a box provided for the purpose hereinafter called the ballot box.

(ii) If a voter is unable to read and write, the returning officer shall cause the vote of such voter to be marked on the ballot paper in the manner directed by such voter and the ballot papers to be placed in the ballot box.

20. Any ballot paper which is not duly marked or on which votes are given to more than one candidate or on which any mark has been made by which the voter may be identified shall be invalid.

21. If a person representing himself to be a particular voter named in the voters' register applies for a ballot paper after another person has voted as such voter the applicant shall, after duly answering such questions as the returning officer may ask, be entitled to mark a ballot paper in the same manner as any other voter, but the ballot paper shall be of a colour differing from the other ballot paper, and, instead of being put into the ballot box, shall be given to the first returning officer and endorsed by him with the name of the voter and his number in the voters' register, and set aside in a separate packet, and shall not be counted by the returning officer. The signature or thumb impression of the voter shall not be made in the voters' register as provided in rule 18 (iii) but shall be made in a separate list containing a copy of the corresponding entry in the voters' register and bearing the heading "List of Tendered Votes."

22. At the close of the poll, in the presence of the persons nominated to assist the returning officers and of such candidates or their agents, if any, as may be in attendance, the returning officer shall—

- (a) open the ballot box and separate the ballot papers which they admit as valid from those which they deem invalid endorsing on the latter the word "rejected" and the ground of rejection;
- (b) count the valid votes given to each candidate;
- (c) prepare and certify as correct a return setting forth—
 - (i) the number of persons who presented themselves to vote ;
 - (ii) the number of valid votes given for each candidate;
 - (iii) the name of the candidate for whom most valid votes were given;
 - (iv) the number of ballot papers declared invalid; and
 - (v) the number of tendered ballot papers ;

- (d) seal up in separate packets the tendered ballot papers, the ballot papers admitted as valid, the ballot papers rejected as invalid, the copy of the voters' register referred to rule 18 (iii) and the list of tendered votes prescribed in rule 21 and record on each packet a description of its contents and the date of the election to which it relates, together with the name of the class or name and number of the ward for a representative of which the election was held;
- (e) permit any candidate or his agent to take a copy of, or an extract from, the return prescribed in clause (c) of this rule.

23. The first returning officer shall then forward the return and the packet of ballot papers and lists referred to in rule 21 to the Deputy Commissioner who shall cause a copy of the return prescribed in rule 22 (c) to be published for general information.

24. (i) The Deputy Commissioner shall retain for three months the packets of the ballot papers and lists forwarded to him by the first returning officer, and shall then, unless there appears to him to be good reasons for retaining them for a further period, cause them to be destroyed.

(ii) While the packets are in the custody of the Deputy Commissioner they shall not be opened or their contents inspected except under his written order or under the order of a Court enquiring into an election petition under any rules that may be in force.

25. If it is found that two or more candidates have polled an equal number of valid votes and the addition of a vote would entitle any of those persons to be declared to be elected, the first returning officer shall decide by lots.

26. The Deputy Commissioner shall in due course forward to the Commissioner the names of the candidates duly elected with a view to their election being notified in the Gazette.

26-A. If any person is elected in more than one ward, he shall by notice in writing signed by him and delivered to the Deputy Commissioner, within three days of publication of the election in the Gazette choose for which of those wards he shall serve. If he does not deliver such notice within the time prescribed, the Deputy Commissioner shall within six days from the date of the publication of the election, declare for which ward he shall serve. Such choice or declaration, as the case may be, shall be conclusive. The provisions of rule 27 shall apply to the resulting vacancy or vacancies in the ward or wards not chosen or declared.

27. When a vacancy occurs among the elected members of a Committee by death, resignation or removal and a new member has to be elected in his place in accordance with Section 8 of the Punjab Small Towns Act, 1922, such election shall be conducted in the manner prescribed in these rules for a general election, save that the date of the election shall be fixed as soon as may be convenient after the occurrence of the vacancy.

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28. (i) Any person who—

- (a) makes or alters any register, list or other document in contravention of these rules or causes a false entry to be made in any such register, list or other document; or
- (b) wilfully makes a false answer to any question put to him under rule 18 (i); or
- (c) obstructs any returning officer in the conduct of an election or in any way interferes with the examination and counting of ballot papers; or
- (d) defaces, injures, alters, disturbs or removes any copy, list, notice or other document posted anywhere under these rules;

shall on conviction by a magistrate, be punishable with fine which may extend to fifty rupees.

(ii) No Court shall take cognizance of any offence under these rules except upon complaint made with the sanction in writing of the Deputy Commissioner.

29. (i) Every petition against the return of any candidate at a small town election on the ground of corrupt practice shall be made in writing signed by a person who was a candidate at the election or by not less than five voters, and the petition shall be presented to the Deputy Commissioner within one week after the day on which the result of the election was declared. The petition shall specify the acts which the objector or objectors allege to amount to corrupt practice as affecting the result of election, and which he or they are prepared to establish and shall on presentation be supported by a statement made on oath by each objector:

Provided that on sufficient cause being shown the limit of one week prescribed by this rule may be extended by the Deputy Commissioner.

(ii) The Deputy Commissioner may either reject the petition after recording his reasons for so doing or make such inquiry thereon as he deems fit either himself or through any officer subordinate to him and not below the rank of a magistrate of the second class as he may appoint in this behalf. If he finds that any corrupt practice has been committed, he shall submit the case to the Commissioner with a recommendation that action be taken under Section 7 of the Act.

30. If any person is convicted of an offence under Chapter IX-A of the Indian Penal Code or if he has been removed from the Committee in consequence of a report under paragraph 28 of these rules his name, if on the voters' register, shall be removed therefrom and shall not be registered thereon for a period of five years from the date of the conviction or the report, as the case may be, or if not on the voters' register shall not be so registered for a like period.

¹ 30-A. The Commissioner may by notification alter all or any of the dates or periods mentioned in rules 6, 7, 9, 10 and 11 in the case of any election.

¹ Added by Punjab Government Notification No. 3742-A, dated 5th February 1924

[Note.—The forms have been omitted.]

General Rules.

31. Every town committee shall observe those general principles of which Government has approved in the several departments of administration.

32. Town Committees shall correspond with local Government and its officers only through the Deputy Commissioner who will be guided by departmental rules in conducting such correspondence.

33. All business shall be transacted in English or Urdu, but proceedings shall be recorded in the language in which the business is transacted. Notice shall be issued in Urdu unless the Commissioner of the Division directs that they shall be issued in both English and Urdu.

34. An abstract of the minutes of each meeting of the town committee shall be displayed in some conspicuous spot accessible to the public at the place of meeting of the town committee and a copy of such abstract shall be supplied on application to the manager of every newspaper which is published within the limits of the district in which the Town Committee is situated.

¹ 34-A. (1) The oath or affirmation of allegiance prescribed in Section 4-A of the Punjab Small Towns Act, 1921, shall be administered by the Deputy Commissioner or any other officer appointed by him in the case of members of a new committee assuming office consequent on a general election and by the chairman of the meeting in other cases.

(2) The administration of oath or affirmation under clause (1) of this rule shall be recorded as a part of the proceedings in the minutes of the meeting.

² 34-B. A copy of the each resolution passed at any meeting of a committee shall within three days from the date of the meeting be forwarded to the Deputy Commissioner.

35. Every general order sanctioned under Section 36 of the Act shall be published in the Gazette.

36. In every case in which public notice is to be given by a town committee in exercise of a power conferred or in discharge of an obligation imposed by the Punjab Small Towns Act, 1922, or by any rule or bye-law made thereunder, such notice shall be published by proclamation, and a copy of such notice shall be displayed in some conspicuous spot accessible to the public at the place of meeting of the committee. A copy of such notice shall also be supplied to the manager of every newspaper which is published within the limits of the district in which the small town is situated.

37. (i) Every town committee shall as soon as possible after the close of each financial year, prepare such reports and returns as may from time to time be prescribed by the local Government on the constitution of the committee and the accounts of its income, expenditure, balances and liabilities or any other matter.

¹ Added by P. G. Notn. No. 20982, dated 5th June 1929.

² Inserted by P. G. Notn. No. 3827, dated 27th November 1929.

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(ii) One copy of the reports and returns as prepared shall be submitted direct to Government through the Deputy Commissioner by the 15th day of May in each year and a second copy shall be forwarded through the Deputy Commissioner to the Commissioner.

(iii) The annual report on the working of the committee shall be submitted to the Deputy Commissioner together with the copy of the returns forwarded for submission to the Commissioner.

38. No land,¹ [which is the property of a town committee, or] which has vested in a town committee under Section 19 of the Act shall be alienated permanently or for a term exceeding ten years except with the previous sanction of the Commissioner of the Division or in exercise of the powers specially conferred upon a town committee by these rules or any other authority of the local Government.

² 38-A. No committee, in whom any land of Government vests or to whom any land of Government has been transferred for management, shall cause or suffer any building of a permanent nature to be constructed on such land, or shall cause or suffer such land to be diverted permanently from its existing use, without the consent of the local Government.

³ 38-B. Every town committee shall maintain its water works, if any, to the satisfaction of the Superintending Engineer, Public Health Circle, Punjab, and shall make due provision for keeping them in proper working order and in a state of constant repair.

39. Every town committee shall be bound by the rules contained in the Punjab Education Code for the time being in force as far as they apply to the local bodies.

40. No member of committee shall be present at or vote or take any other part in any proceedings of a committee or sub-committee relating to a matter in which he or either of his parents or any other descendant of either of his parents or the husband or wife, as the case may be, of any such descendant has a direct or indirect pecuniary interest.

⁴ 41. No annuity or gratuity on retirement and no leave, absentee or acting allowances to an officer paid from a town fund shall, without the express sanction of the local Government, exceed what would be admissible under the rules which apply to an officer paid from general revenues.

⁵ 42. The fee leviable for a notice of demand served under Section 31 of the Act shall be eight annas in the case of demand of five rupees or less and one rupee in other cases for every notice so issued.

¹ Inserted by Punjab Government Notification No. 22762, dated the 31st August 1933

² Added by Punjab Government Notification No. 30035, dated 23rd November 1927.

³ Inserted by Punjab Government Notification No. 30006, dated 13th September 1932.

⁴ Added by Punjab Government Notification No. 13506, 29th November 1927.

⁵ Added by Punjab Government Notification No. 30035, dated 23rd November 1927,

43. No town committee shall pay a reward or honorarium to any member, officer or servant of the committee or of any other local authority without the previous sanction of Deputy Commissioner if the amount of the reward or honorarium does not exceed ten rupees or of the Commissioner if such amount exceeds ten rupees but does not exceed one year's salary of the officer or servant concerned or of the local Government in any other case.

Rules re Appointment, Suspension or Dismissal of Officers and Servants in Small Towns. Punjab Government Notification No. 9052, dated 3rd April 1925 as amended by Punjab Government Notifications No. 21566, dated 16th August 1927, No. 3365, dated 20th December 1927, No. 17130 dated 18th June 1927 and No 5394, dated 7th February 1931 and by subsequent notifications.

RULES.

1. In these rules—

(1) "to dismiss" means permanently to remove from a substantive appointment for misconduct or incompetence.

(2) "Sanitary works" include all works—

(a) connected with the collection, storage, protection, supply, distribution and regulation of water for drinking or flushing;

(b) connected with drainage, sewerage or the utilization of sewerage;

(c) connected with the sanitation of streets, slaughterhouses, markets, lodging houses, *sarais*, bathing ghats and other public places;

(d) subsidiary to, or connected with, or relating to, the construction or maintenance of water and flood and drainage channels, sewers and street gutters.

(3) "The British Medical Act" has the meaning assigned to it in Section 3 of the Punjab Medical Registration Act, 1916.

2. (1) Except as provided in sub-rules (2) and (3) no person shall be appointed as an officer or servant of a Town Committee, save in pursuance of a resolution of the Committee, and no officer or servant of a Town Committee shall be suspended, dismissed or transferred from one appointment to another, save in pursuance of such a resolution.

(2) If the Committee has, in exercise of the power conferred by Section 42 of the Act, delegated its power to the President or the Vice-President, the President or the Vice President may, in exercise of the power so delegated, by order appoint, dismiss or transfer from one appointment to another any officer or servant of the committee.

(3) In cases of emergency, the President, or in his absence the Vice-President, may appoint or suspend or transfer from one appointment to another any officer or servant of the committee, subject to confirmation of such appointment, suspension or transfer by the committee at its next subsequent meeting.

¹ Added by Punjab Government Notification No. 40070, dated 10th December 1929.

* 2-A. No person, who is either a parent or descendant of a member of a town committee or a descendant of any parent of such member, or the husband or wife of such member or descendant, or a parent of the husband or wife of such member or a descendant of any such parent last referred to, shall be appointed as an officer or servant of such town committee without the previous sanction of the Deputy Commissioner."

3. (1) When it is proposed to dismiss any officer or servant of a committee, the charges against him shall be framed in writing, and together with the evidence in support of them, shall be explained to him; his statement and any evidence which he may produce in his defence shall be recorded, and a separate finding shall be recorded in respect of each charge.

(2) Any officer or servant of a committee who has been dismissed may within thirty days of the date of the resolution or order of dismissal appeal to the Deputy Commissioner whose decision shall be final, provided that the Deputy Commissioner may, if he thinks fit for reasons to be recorded, admit an appeal lodged after the expiry of thirty days from the date of the resolution or order of dismissal.

* (3) When the Deputy Commissioner requires a committee to dismiss any person under Section 11 of the Punjab Small Towns Act, 1922, he shall follow the procedure prescribed by sub-rule (1) above.

* 3-A. When the Deputy Commissioner proposes to direct a town committee to dismiss any person under Section 11 of the Punjab Small Towns Act, 1922, he shall follow the procedure prescribed by sub-rule (1) of the rule 3 above.

4. No person shall be appointed by a committee as town engineer unless he possesses such qualifications as are prescribed for the Punjab Subordinate Engineering services, and has in addition three years' professional standing.

5. No person shall be appointed by a Committee to any office, other than the office of town engineer, connected with sanitary or other works the proper discharge of which requires the exercise of professional skill unless he possesses such qualifications as the local Government may, from time to time, by general or special order, prescribe.

6. No person shall be employed by a committee as Medical Officer of Health or Assistant Medical Officer of Health who does not possess—

(a) a degree or diploma entitling him to be registered under the Punjab Medical Registration Act, 1916, or the British Medical Act; and

* Substituted by Punjab Government Notification No. 892, dated 11th January 1933.

* Added by Punjab Government Notification No. 30253, dated 16th September 1932.

* Inserted by Punjab Government Notification No. 5562, dated 24th February 1933.

(b) a qualification in public health entitling him to be registered under the British Medical Acts or granted by a recognised Indian university :

¹ [Provided that the local Government may exempt any town committee from the operation of clause (b).]

7. No person shall be employed by a committee as a Female Assistant Medical Officer of Health unless she possesses the diploma of M. P. L. or a higher diploma and is registered under the Punjab Medical Registration Act, 1916.

² 8. (1) No person asserting himself to be a *hakim* or *vaid* shall be employed by a committee unless he—

(a) has passed one of the following examinations:—

- (i) the Hakim-i-Haziq of the Islamia College, Lahore;
- (ii) the Zubdatul Hukama of the Islamia College, Lahore;
- (iii) the Kaviraj of the D. A. V. College, Lahore;
- (iv) the Vaidya Vachaspati of the D. A. V. College, Lahore;
- (v) the Unani (Arabic) Final Fazil-i-Tib-o-Jirahat of the Ayurvedic and Unani Tibbi College, Delhi;
- (vi) the Unani (Urdu) Final Kamil-Tib-o-Jirahat of the Ayurvedic and Unani Tibbi College, Delhi;
- (vii) the Vedic (Sanskrit) Final Ayurvedacharya Dhanvantri of the Ayurvedic and Unani Tibbi College, Delhi; or
- (viii) the Vedic (Bhasha) Final Bishagacharya Dhanvantri of the Ayurvedic and Unani Tibbi College, Delhi or
- (ix) the Haziqul-Hukma of the Bhupindra Tibbya College, Patiala.
- (x) the Tabib-i Akmal of the Bhupindra Tibbya College, Patiala; or

(b) is a registered medical practitioner not being in, or having been dismissed from, the service of Government; or

(c) has a diploma showing that he has been the pupil of a practising *hakim* or *vaid* and has himself continuously and satisfactorily practised the profession for not less than seven years; or

(d) is a Sanad holder of the Takmil-ul-Tib College, Lucknow.

¹ Added by Punjab Government Notification No. 25720, dated 12th July 1932.

² As amended by Punjab Government Notifications No. 2156, dated 26th December 1927 and No. 33651, dated 20th December 1927.

(2) Except with the previous sanction of the local Government no person describing himself to be a *hakim* or *vaid* shall be paid a remuneration exceeding fifty rupees per mensem, and without such sanction no *hakim* or *vaid* who has not one or other of the qualifications specified in clauses (a) and (b) of sub-rule (1) shall be paid a remuneration exceeding twenty-five rupees per mensem.

(3) A committee may supplement the remuneration payable to a *hakim* or *vaid* under sub-rule (2) by the supply of medicines either free or on commission sale.

(4) Every *hakim* or *vaid* employed by a committee shall keep a register of patients and the Commissioner of the division or the Deputy Commissioner or Civil Surgeon of the District or the President or Secretary or any other person authorised to this effect by the committee may call for and inspect such register.

9. No town committee shall employ or continue to employ any person as a dispenser in any hospital or dispensary unless he has undergone a course of three months' training at a hospital at the headquarters of a district or such other hospital as may be declared by Government to be a hospital at which such training may be undergone and has obtained a certificate from the Civil Surgeon certifying that he is fit for employment as a dispenser:

Provided that any person who at the time this rule comes into force is employed as a dispenser may be retained in such employment for a period of one year from such date, but shall not be retained in employment as a dispenser thereafter unless he has, in the meantime, undergone the course of training and obtained the certificate prescribed above or certified by the Civil Surgeon to be fit for employment as a dispenser without undergoing such course of training.

10. No town committee shall appoint to the post of Sanitary Inspector any person who does not possess at least one of the following certificates—

- (a) The Punjab Sanitary Inspector's Certificate;
- (b) The Bombay Sanitary Surveyor's Certificate.
- (c) The Madras Sanitary Inspector's Certificate.
- (d) A certificate from the Royal Sanitary Institute, London.
- (e) A certificate from the Sanitary Inspectors' Association, London and whose name at the time of his appointment does not appear in the Register of Sanitary Inspectors maintained by the Director of Public Health, Punjab.

11. The pay of Sanitary Inspector shall not be less in either grade than the minimum of the scale prescribed below—

1st grade Rs. 100 - 5 - 150 per mensem

2nd grade Rs. 50 - 4 - 90 „ „ :

¹ Added by Punjab Government Notification No. 17310, dated 18th June 1927 and Punjab Government Notification No. 13566, dated 9th April 1919.

Provided that a Sanitary Inspector shall not be promoted to the 1st grade until he has passed the prescribed examination;

Provided further that a committee may grant a conveyance allowance in addition to pay.

12. No town committee shall employ a Sanitary Inspector on work other than sanitation, registration of vital statistics and the prevention of encroachments on public property, except with the sanction of the Director of Public Health, Punjab.

13. Every Sanitary Inspector shall maintain a diary of sanitary reports and recommendations; and shall at such periods as may be prescribed by the Director of the Public Health submit his diary to the Medical Officer of Health of the Committee or where there is no such Medical Officer of Health to the District Medical Officer of Health who, after recording his remarks therein, shall forward the diary to the President of the Committee for orders:

Provided that if any special report is submitted by a Sanitary Inspector, only an abstract of such report with the order, if any, shall be entered in the diary in the appropriate place.

14. Every Sanitary Inspector shall when required submit his diary to the Director of Public Health or any of his assistants.

15. Every committee of a small town mentioned in Appendix A of these rules shall employ at least one Sanitary Inspector.

16. The appointment and dismissal of a Sanitary Inspector by a town committee shall be subject to the approval of the Director of Public Health, Punjab, but in other respects Sanitary Inspectors shall be under the control of the local bodies which employ them.

APPENDIX A.

- | | |
|---------------|---------------------|
| 1. Bhalwal. | 6. Pattoki. |
| 2. Chakwal. | 7. Sillanwali. |
| 3. Gujarkhan. | 8. Tandlianwala. |
| 4. Hafizabad. | 9. Tarn Taran. |
| 5. Jaranwala. | 10. Toba Tek Singh. |

Note—Rules 10 to 16 were added by Punjab Government Notification No. 19392, dated 3rd June 1928 and No. 2704-S, dated 20th July 1928 and No. 23966, dated 15th August 1928.

¹ **Note**.—The diaries maintained under this rule shall be for the week ending on Saturday and submitted to district Medical Officer of Health by Monday morning following the week to which they relate. The District Medical Officer of Health after perusal of those diaries shall transmit them to the President, Small Town Committee concerned for recording his remarks thereon, (vide letter No. 12572-76G, dated 21st August 1928) from Director of Public Health to all Commissioners of Divisions.

Business bye-laws applicable to all Small Town Committees.
(Punjab Government Notification No. 28468, dated 17th December 1924 as amended by Punjab Government Notification No. 13632, dated 30th April 1927 Punjab Government No. 12632, dated 30th April 1927, and Punjab Government Notification 20105, dated 1st August 1927 and subsequent notifications).

1. The President or, in his absence, the Vice-President or, if no President or Vice-President has yet been elected, the Secretary may convene a meeting of the committee at any time or place.

1-A. These rules may be called the Small Towns Business Rules, 1924.

Note.—Section 10 of the Act requires that every committee shall meet at least once a month.

2. (1) When a meeting is to be convened notice thereof shall be sent to every member ordinarily three clear days before the date of the meeting and in any case at least one clear day before such date.

(2) Every such notice shall state the place, time and date fixed for the meeting and shall be signed by the President, Vice-President or Secretary.

(3) Every such notice shall be accompanied by a duly attested list of business hereafter called "the agenda" to be transacted at the meeting.

(4) If it is necessary to adjourn a meeting the Chairman of the meeting shall give notice at the place of meeting, of the place, time and date to which the meeting is adjourned, and notice thereof shall, as soon as may be, sent to every member of the committee not present at the meeting adjourned: provided that it shall be lawful for the President or in his absence, the Vice-President in an emergency to alter with due notice the place, time and date so fixed.

3. (1) The agenda shall include every matter that any member may desire to put before a meeting: provided that a copy of the motion thereon signed by such member and by a seconder has been delivered to the Secretary of the committee at the committee's office at least seven clear days before the meeting: provided further that the President may, for reasons to be recorded in writing, refuse to permit any matter to be placed on the agenda if he considers that the matter is one which the town committee is not concerned or is otherwise not suitable for discussion at a meeting of the committee;

¹ Provided further that no matter shall be included in the agenda for any meeting of a committee nor be discussed at any such meeting which is not connected with the functions and duties of committees as prescribed by the Punjab Small Towns Act, 1922, and it shall be the duty of the President to disallow the inclusion in the agenda of any such matter, and the President or the Chairman of the meeting shall refuse to permit at a meeting the discussion of any such matter;

Provided further that the President or Chairman of a meeting may permit the discussion of any such matter if the discussion of such matter appears to him to be in the public interest and not in any way likely to impede the administration or to promote or

¹ Substituted by Punjab Government Notification No. 516 of 6th January 1932.

encourage lawlessness or to cause communal discord or to be for any other reason undesirable.

(2) Any member aggrieved by the refusal of the President to allow any matter to be placed on the agenda may appeal to the Deputy Commissioner whose decision as to whether the matter may be so placed or not shall be final.

(3) The files of all cases on the agenda of a meeting shall be made available for inspection in the Secretary's office immediately after the despatch of notices convening a meeting.

(4) No business shall be transacted at any meeting of a committee unless at least three members are present: provided that if at any meeting there is no quorum the Chairman may adjourn the meeting in accordance with the provisions of sub-rule (4) of rule 2 to a subsequent date and on such subsequent date the agenda may be disposed of whether a quorum is present or not.

5. The proceedings of every meeting shall commence with a motion by the Chairman that the minutes of the previous meeting be confirmed. Such minutes shall ordinarily be taken as read, but if for any reason they have not been previously circulated to the members they shall be read before they are taken into consideration. Any member who was present at the previous meeting may object to the confirmation of the minutes by moving an amendment on the ground that any matter is not correctly recorded or expressed.

6. The items on the agenda shall then be dealt with in the order in which they appear in the notice: provided that the Chairman with the consent of the majority of the members present, may vary such order or bring before the meeting any matter not included in the agenda.

7. The Chairman shall decide all points of order or procedure, and his decision shall be final. Whenever he rises to speak any member speaking shall resume his seat.

8. If more than one member rise to speak at the same time, the Chairman shall name the member who is to speak.

9. Members when speaking shall stand and address the Chairman and except on a point of order, or personal explanation, the member speaking shall not be interrupted by any member other than the Chairman.

10. No speech shall be read.

11. So far as is possible and consistent with the matter under discussion no member shall direct personal or objectionable remarks at any other member. For the purpose of this rule the ruling of the Chairman shall be final.

12. A member desiring to raise a point of order or make a personal explanation shall rise and address the Chairman. The member speaking shall then give way, and remain seated until the Chairman has decided the point raised: provided that the Chairman may permit any other member, including the member called, to speak on the said point.

13. If the meeting refuses to obey the ruling of the Chairman on any matter he may adjourn it at once; and when he has declared

the meeting adjourned on this or any other ground, the subsequent proceedings of the meeting or any residue thereof shall be void and shall not appear in the minutes.

14. The Chairman after calling the attention of the meeting to the conduct of a member who persists in stating or in arguing upon a matter which is, in the opinion of the Chairman, irrelevant or in repeating his own arguments or the arguments used by other members, may direct him to discontinue his speech.

15. The Chairman may name any unruly member for report to Government with a view to action being taken under Section 7 of the Act.

16. The Chairman may direct any member, whose conduct is in his opinion grossly disorderly, to withdraw immediately from the meeting, and any member so ordered to withdraw shall do so forthwith and shall, unless recalled by the Chairman, absent himself during the remainder of the meeting. The Chairman may cause to be summarily removed any member who disobeys an order to withdraw under this rule.

¹ 17. The President or the Vice-President shall on the application of any ratepayer or his representative or agent, supply him with a copy in English, Roman Urdu or Vernacular, as the case may be, of any order passed by the town committee, on the payment of fees at the same rates as are prescribed from time to time for the supply of copies under Standing Order No. 5 of the Financial Commissioners.

² Added by Punjab Government Notification No. 20103, dated 1st August 1927.

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THE PUNJAB MUNICIPAL AMENDMENT ACT, 1934.

PUNJAB ACT, I OF 1934.

Received the assent of His Excellency the Governor on the 8th March 1934 and that of His Excellency the Viceroy and Governor-General on the 28th March 1934.

(It was first published on 6th April 1934.)

An Act further to amend the Punjab Municipal Act.

WHEREAS it is expedient further to amend the Punjab Municipal Act, 1911. for the purpose and in the manner hereinafter appearing:

IT IS HEREBY ENACTED as follows:—

1. (1) This Act may be called the Punjab Municipal (Amendment) Act, 1934.

(2) It shall come into force on such date as the local Government may by notification appoint in this behalf.

2. (i) In sub-section (1) of section 13 of the Punjab Municipal Act, 1911 (hereinafter referred to as the said Act), the following words shall be substituted for the words occurring after the word "office" where it occurs for the second time, namely:—

"shall, unless the local Government otherwise directs, be a member of the committee until the date fixed for the meeting at which his successor is required to take the oath of allegiance."

(ii) For sub-section (3) of the same section the following sub-section shall be substituted, namely:—

(3) Notwithstanding anything contained in sub-section (2) or in any rules made by the local Government thereunder, an outgoing member shall, unless the local Government otherwise directs, continue in office until the date fixed for the meeting at which his successor is required to take the oath of allegiance."

3. (i) A comma shall be inserted after the word "section" in the proviso to sub-section (1) of section 16 of the said Act.

(ii) At the end of the same proviso, the semi-colon and the word "and" shall be omitted and a full stop be substituted.

4. (i) In sub-section (2) of section 50 of the said Act, for the word " clause " the word " sub-section " shall be substituted.

(ii) In the second proviso to sub-section (2) of the same section, for the word " clause " the word " sub-section " shall be substituted.

5. In sub-section (1) of section 78-A of the said Act, between the words " small Town or " and the words " an area notified " the words " the Committee of " shall be inserted.

6. In sub-section (3) of section 170-A of the said Act, for the figures and letter " 170-C," the figures and letters " 170-B " shall be substituted.

7. In section 170-B of the said Act, for the figures and letter " 170-B," the figures and letter " 170-A " shall be substituted.

8. In section 170-C of the said Act, for the figures and letters " 170-B " and " 170-C," the figures and letters " 170-A " and " 170-B " shall be substituted, respectively.

9. In section 170-E of the said Act, for the figures and letters " 170-B " and " 170-D," the figures and letters " 170-A " and " 170-C " shall be substituted, respectively.

10. In section 170-F of the said Act, for the figures and letter " 170 B," the figures and letter " 170-C " shall be substituted.

11. In the proviso to sub-section (1) of section 174 of the said Act, all the words between the word " damage " where it first occurs and the words " he may sustain " shall be deleted.

12. At the end of clause (j) of sub-section (1) of section 190 of the said Act, the words " or either of both " shall be deleted and for the word " or " where it first occurs the word " and " shall be substituted.

13. In clause (c) of sub-section (1) of section 192 of the said Act, the word " twenty " for the word " forty," the word " ten " for the word " twenty " and the words " such unbuilt area " for the words " the municipal area " shall be substituted.

14. In section 192-A of the said Act—

(i) the word " and " between the word " shall " and the word " unless " shall be omitted;

(ii) between the words " purpose shall " and the words " and unless " and after the words " was sanctioned " commas shall be added;

(iii) the word " he " where it last occurs shall be omitted.

15. In clause (d) of section 197 of the said Act, the word "cream" shall be spelt in ordinary type, and commas shall be inserted between the words "sale" and "of," and between the words "cream" and "butter."

16. In clause (w) of sub-section (1) of section 240 of the said Act, between the figures "236" and the semi-colon, the following words shall be added, namely:—

"and the powers to be exercised by such Local Self-Government Board or Inspectorate as the local Government may establish."

Note.—The amendments effected by this Act have been noted as proposed amendments in the Addenda and Corrigenda, and the ambiguity pointed in the existing section 192 has been removed by substituting the words "unbuilt area" for the last four words in section 192 (c).

THE PUNJAB MUNICIPAL EXECUTIVE OFFICER (AMENDMENT) ACT, 1934.

PUNJAB ACT, II OF 1934.

**Received the Assent of His Excellency the Governor on the
8th March 1934 and that of His Excellency the Viceroy and
Governor-General on the 29th March 1934.**

(It was first published on 6th April 1934).

*An Act to amend the Punjab Municipal (Executive Officer)
Act, 1931.*

WHEREAS it is expedient to amend the Punjab Municipal (Executive Officer) Act, 1931, for the purpose and in the manner hereinafter appearing:

IT IS HEREBY ENACTED as follows:—

1. (1) This Act may be called the Punjab Municipal Executive Officer (Amendment) Act, 1934.

(2) It shall come into force on such date as the local Government may by notification appoint in this behalf.

2. (i) Section 7 of the Punjab Municipal (Executive Officer) Act, 1931 (hereinafter referred to as the said Act), shall be numbered as sub-section (2) of section 7, and the following shall be added as sub-section (1), namely:—

"(1) The Committee may delegate the powers conferred upon it by section 39 of the Punjab Municipal Act, 1911, to the Civil Surgeon of the district or to an officer of the Department of Public Instruction."

(ii) In sub-section (2), as re-numbered, the colon and dash at the end shall be replaced by a comma, and the following words inserted, namely:—

“or to the Civil Surgeon of the district or to an officer of the Department of Public Instruction the powers under section 39 of the Punjab Municipal Act, 1911 conferred upon him by section 4,” and

(iii) In clause (b) of the proviso to sub-section (2) of the said section, as re-numbered between the words “shall not” and the words “delegate” the following words and comma shall be inserted, namely:—

“except to the Civil Surgeon of the district or to an officer of the Department of Public Instruction.”

Note.—Section 33 is cancelled so far as Municipal Committees governed by Executive Officers Act are concerned. Such Municipal Committees have now been empowered to delegate their powers under S. 39 to the Civil Surgeon or to an officer of the Department of Public Instruction. The opinion expressed in notes on p. 960 that the word “Committee” is a mistake for “Executive Officer” is not correct.

3. In the proviso to section 11 of the Act, the following shall be substituted for the words occurring after the words “Legislative Council” where they first occur, namely:—

“The local Government, in order to give members of the Council an opportunity for moving a motion for discussing the draft, shall defer final publication of the rules until after the expiry of the date fixed for consideration of a motion for such discussion, provided that notice of such motion has been given before the first meeting of the Council held after the expiry of thirty days from the publication of the draft.”

4. For item 3 in Schedule II of the said Act the following shall be substituted, namely:—

“3. In section 35, in sub-section (1), the words ‘or the Executive Officer’ shall be added after the word ‘president’ where it first occurs; and in sub-section (2) the words ‘or the Executive Officer’ shall be added after the word ‘vice-president’; and in sub-section (3) between the words ‘the president or’ and the words ‘or during’ the words ‘in his absence’ shall be omitted and the words ‘the Executive Officer or in the absence of the president’ shall be added.”

5. Item 4 in Schedule II of the said Act shall be omitted.

6. For item 13 in Schedule II of the said Act the following shall be substituted, namely:—

“13. (a) In section 193 the words ‘or the Executive Officer, as the case may be’ shall be inserted in the following places, namely:—

- (i) in sub-section (1) between the words ‘the committee’ and the word ‘shall’;
- (ii) in sub-section (2) between the words ‘the committee’ where they first occur and the words ‘may refuse’;
- (iii) in sub-section (3) between the word ‘committee’ and the word ‘may’, where it first occurs;
- (iv) in sub-section (4) between the words ‘the committee’ where they first occur and the words ‘neglects or omits’;

(b) In the same section the words ‘or he, as the case may be,’ shall be inserted in the following places, namely:—

- (i) in sub-section (2) between the word ‘it’ where it first occurs and the word ‘deems’;
- (ii) in sub-section (3) between the word ‘it’ and the word ‘may’ where it last occurs.”

For item 14 in Schedule II of the said Act, the following shall be substituted, namely:—

In section 194 the words ‘or the Executive Officer, as the case may be,’ shall be inserted after the word ‘committee’ wherever it occurs.”

In item 15 in Schedule II of the said Act, for the ‘last proviso’ the words “first proviso” shall be substituted.

Note.—These amendments have been noted under the Executive Officer’s Act as proposed amendments.



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